रजिस्ट्री सं. डी. एल. (एन.) 04/0007/2003—05

REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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WEEKLY

सं. 7] नई दिल्ली, फरवरी 10—फरवरी 16, 2013, शनिवार/माघ 21—माघ 27, 1934
No. 7] NEW DELHI, FEBRUARY 10—FEBRUARY 16, 2013, SATURDAY/MAGHA 21—MAGHA 27, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 5 फरवरी, 2013

का. आ. 361.—राष्ट्रपति, दिनांक 5 फरवरी, 2013 (अपराह्न) से श्री रोहिंटन एफ. नरीमन, वरिष्ठ अधिवक्ता का भारत के महासालिसिटर के पद से त्यागपत्र स्वीकार करते हैं।

[फा. सं. 18(05)/2011-न्यायिक]
डॉ. आर. एस. श्रीनेत, सहायक विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 5th February, 2013

S.O. 361.—The President is pleased to accept the resignation of Shri Rohinton F. Nariman, Senior Advocate as Solicitor General of India with effect from 5th February, 2013 (AN).

[F. No. 18 (05)/2011-Judl.]
Dr. R.S. SHRINET, Assistant Legal Adviser

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 फरवरी, 2013

का. आ. 362.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम संख्या 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एस एल पी (सी आर एल) नं. 2275/2011 (सीसी नं. 4085/2011 सी बी आई विरूद्ध बाला साहब ठाकरे एवं अन्य) विरूद्ध दिल्ली विशेष पुलिस स्थापना (सी बी आई) द्वारा गठित इलाहाबाद उच्च न्यायालय, लखनऊ पीठ के द्वारा पारित दिनांक 20-5-2010 के आदेश (अयोध्या में विवादित ढाँचा के गिराने से सम्बंधित मामलों) में श्री पी. आर. राव, वरिष्ठ वकील को इस घटना से सम्बंधित तथा इससे सम्बद्ध अन्य मामलों में सर्वोच्च न्यायालय में उपस्थित होने हेतु नियुक्त करती है ।

[सं. 225/2/2013-ए वी डी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 6th February, 2013

S.O. 362.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri P. P. Rao, Sr. Advocate to appear in the Supreme Court of India in SLP (Crl.) No. 2275/2011 (CC No. 4085/2011 CBI V/s Bala Sahab Thackerey and others against order dated 20-5-2010 passed by Allahabad High Court, Lucknow Bench, (Cases pertaining to the demolition of the disputed structure at Ayodhya) instituted by the Delhi Special Establishment (C.B.I) in the Supreme Court of India and other matters connected therewith and incidental thereto.

[No. 225/2/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 फरवरी, 2013

का.आ. 363.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री सी. आर. नसीर अहमद (जन्म तिथि : 5-1-1970) को उनकी नियुक्ति की अधिसूचना की तिथि से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, सिंडिकेट बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है ।

[फा. सं. 6/24/2011-बी ओ-I]
विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 1st February, 2013

S.O. 363.—In exercise of the powers conferred by sub-section 3 (h) and (3-A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby nominates Shri C. R. Naseer Ahmed (DoB : 5-1-1970) as part-time non-official director on the Board of Directors of Syndicate Bank for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/24/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 4 फरवरी, 2013

का.आ. 364.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उप-खंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, यूको बैंक के सिंगल विंडो आपरेटर-क श्री परथा चन्दा (जन्म तिथि 8-8-1960) को दिनांक 15-2-2013 को अथवा उसके बाद पदभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा यूको बैंक के कर्मकार कर्मचारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक इनमें से जो भी पहले हो, यूको बैंक के निदेशक मण्डल में कर्मकार कर्मचारी निदेशक के रूप में नियुक्त करती है ।

[फा. सं. 6/8/2012-बी ओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 4th February, 2013

S.O. 364.—In exercise of the powers conferred by clause (e) of sub-section 3 of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with Sub-clause (1) & (2) of Clause 9 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby appoints Shri Partha Chanda, (Date of Birth : 8-8-1960), Single Window Operator-A, UCO Bank, as Workmen Employee Director on the Board of Directors of UCO Bank for a period of three years with effect from the date of his taking over the charge of the post on or after 15-2-2013 or until he ceases to be an workmen Employee of UCO Bank or until further orders, whichever is the earliest.

[F. No. 6/8/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 4 फरवरी, 2013

का.आ. 365.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (1) के खण्ड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, वित्तीय सेवाएं विभाग, वित्त मंत्रालय के सचिव श्री राजीव टकरू को तत्काल प्रभाव से और अगले आदेश होने तक, श्री डी. के. मित्तल के स्थान पर भारतीय रिजर्व बैंक के केन्द्रीय बोर्ड में निदेशक के रूप में नामित करती है ।

[फा. सं. 7/2/2012-बी ओ-I]
श्रेया गुहा, निदेशक

New Delhi, the 4th February, 2013

S.O. 365.—In exercise of the powers conferred by clause (d) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934, the Central Government hereby nominates Shri Rajiv Takru, Secretary, Department of Financial Services, Ministry of Finance, to be a director on the Central Board of Directors of Reserve Bank of India with immediate effect and until further orders vice Shri D. K. Mittal.

[No. 7/2/2012-BO-I]
SREYA GUHA, Director

नई दिल्ली, 4 फरवरी, 2013

का.आ. 366.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, वित्तीय सेवाएं विभाग, वित्त मंत्रालय के सचिव श्री राजीव टकरू को तत्काल प्रभाव से और अगले आदेशों तक, श्री डी. के. मित्तल के स्थान पर भारतीय स्टेट बैंक के केन्द्रीय बोर्ड में निदेशक के रूप में नामित करती है ।

[फा. सं. 7/2/2012-बी ओ-I]
श्रेया गुहा, निदेशक

New Delhi, the 4th February, 2013

S.O. 366.—In exercise of the powers conferred by clause (e) of Section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government hereby nominates Shri Rajiv Takru, Secretary, Department of Financial Services, Ministry of Finance, to be a Director on the Central Board of Directors of State Bank of India with immediate effect and until further orders vice Shri D. K. Mittal.

[No. 7/2/2012-BO-I]
SREYA GUHA, Director

नई दिल्ली, 6 फरवरी, 2013

का.आ. 367.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा 6 की उप-धारा (5) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण (ए ए आई एफ आर) के सदस्य श्री आर. सी. मिश्रा, को पदभार ग्रहण करने की तारीख से ए ए आई एफ आर के नियमित अध्यक्ष की नियुक्ति होने की तारीख तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, औद्योगिक और वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण में अध्यक्ष के रूप में कार्य करने के लिए प्राधिकृत करती है ।

[फा. सं. 20/2/2012-आई एफ-II]
उदय भान सिंह, अवर सचिव

New Delhi, the 6th February, 2013

S.O. 367.—In exercise of the powers conferred by sub-section (5) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, (1 of 1986), the Central Government hereby authorizes Shri R. C. Mishra, Member, Appellate Authority for Industrial and Financial Reconstruction (AAIFR) to act as Chairman, AAIFR with effect from the date of assumption of the charge of the post till the date of appointment of regular Chairman, AAIFR or until further orders, whichever is the earliest.

[F. No. 20/2/2012-IF-II]
UDAI BHAN SINGH, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 5 फरवरी, 2013

का.आ. 368.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में वाणिज्य विभाग के अधीन स्पाइसेस बोर्ड के निम्नलिखित प्रादेशिक कार्यालय को अधिसूचित करती है, जिसके 80 प्रतिशत से अधिक कर्मचारीवृंद ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है :—

स्पाइसेज बोर्ड

(वाणिज्य एवं उद्योग मंत्रालय, भारत सरकार)

प्रादेशिक कार्यालय, जी-312, प्रथम तल,

शास्त्री नगर, जोधपुर-342003, राजस्थान ।

[सं. ई-11013/1/2008-हिन्दी]
श्रीमती देवकी, निदेशक (राजभाषा)

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 5th February, 2013

S.O. 368.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the ion) Rules, 1976, the Central Govt. hereby notifies the following regional office of Spices Board under Department of mmerce, whereof more than 80% staff have acquired a working knowledge of Hindi.

Species Board

(Ministry of Commerce and Industry, Govt. of India),

Regional Office,

G-312, 1st Floor, Shastri Nagar,

Jodhpur-342003, Rajasthan.

[No. E-11013/1/2008-Hindi]
Smt. DEVKI, Director (O.L.)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 24 जनवरी, 2013

का. आ. 369.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत जवाहर नवोदय विद्यालय, गजोखर, वाराणसी, उत्तर प्रदेश-221206 को ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[सं. 11011-1/2013-रा.भा.ए.]
अनन्त कुमार सिंह, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O.L. Unit)

New Delhi, the 24th January, 2013

S.O. 369.—In pursuance of sub rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Jawahar Navodaya Vidyalaya, Gajokhar, Varanasi, Uttar Pradesh-221206 under the Ministry of Human Resource Development, (Deptt. of Schedule Education & Literary) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-1/2013-O.L.U.]
ANANT KUMAR SINGH, Jt. Secy.

युवा कार्यक्रम एवं खेल मंत्रालय

नई दिल्ली, 7 फरवरी, 2013

का. आ. 370.—केन्द्रीय सरकार एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायतशासी कार्यालय भारतीय खेल प्राधिकरण-विशेष क्षेत्र खेल, पोर्टब्लेयर, जिसके 80% से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[मि. सं. ई-11011/2/2008-हि.ए.]
थंगलेमलियन, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 7th February, 2013

S.O. 370.—In pursuance of sub-rule (4) of Rule 10 of Official Language (use for official purpose of the Union) Rules 1976, the Central Government hereby notifies Sports Authority of India—Special Area games, Portblair, an autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F. No. E-11011/2/2008-H.U.]
THANGLEMLIAN, Dy. Secy.

नई दिल्ली, 7 फरवरी, 2013

का. आ. 371.—केन्द्रीय सरकार एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय भारतीय खेल प्राधिकरण-प्रशिक्षण केन्द्र उधमपुर, जम्मू-कश्मीर, जिसके 80% से अधिक कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[मि. सं. ई-11011/2/2008-हि.ए.]
थंगलेमलियन, उप सचिव

New Delhi, the 7th February, 2013

S.O. 371.—In pursuance of sub-rule (4) of Rule 10 of Official Language (use for official purpose of the Union) Rules 1976, the Central Government hereby notifies Sports Authority of India—Training Centre, Udhampur, J&K an autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F. No. E-11011/2/2008-H.U.]
THANGLEMLIAN, Dy. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 30 जनवरी, 2013

का. आ. 372.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए है, वे स्वीकृत कर दिए गए हैं :

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृति करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भामा सं./भाग/खण्ड/वर्ष
1	2	3	4	5	6
1.	3893383	3-12-2012	ब्रीलियेंट इलेक्ट्रीकल्स एवं इलेक्ट्रानिक्स प्रा.लि. गाला संख्या 3, प्लॉट सं. 21 फेस 1, गणेश इण्डस्ट्रीयल टाउनशिप, कोलेगांव, पालघर, जिला : ठाणे-401404.	घरेलू और समान प्रयोजनों के लिए स्विचें	भा.मा. 3854 : 1997
2.	3893484	3-12-2012	लक्ष्मी रतन इण्डस्ट्रीज 42/343, मोतीलाल नगर, गोरेगांव पश्चिम, मुंबई-400014	घरेलू और समान प्रयोजनों के लिए स्विचें	भा.मा. 3854 : 1997
3.	3894082	5-12-2012	स्टारलाईट लाईटिंग लिमिटेड 6 एमआईडीसी, सातपुर, नासीक, महाराष्ट्र, पिन-422007	सामान्य प्रकाश व्यवस्थाओं के लिए स्वत: बालास्टकृत लैम्प (भाग 2 और 2) सुरक्षा अपेक्षाएं	भा.मा. 15111 : 2002
4.	3894486	5-12-2012	प्लुटस केबल (इंडिया), गाला नं. 24, ग्राउन्ड फ्लोर, मधुरम इण्ड. इस्टेट विलेज वालिवए थाने, बसई-ईस्ट-401201	1100 वो तक एवं सहित कार्य-कारी वोल्टता के लिए पी वी सी रोधित केबल	भा.मा. 694 : 1990
5.	3894587	5-12-2012	इलेक्ट्रो कॉम इन्टरप्राईजेज, 297, पटेल इण्डस्ट्रीयल इस्टेट, नवपाडा रोड, अजीत ग्लास बस स्टप के नजदीक, ओसीवरा, जोगेश्वरी पश्चिम, मुंबई-400102	घरेलू और समान प्रयोजनों के लिए स्विचे	भा.मा. 3854 : 1997

1	2	3	4	5	6
6.	3895589	7-12-2012	मेलकिन इण्डस्ट्रीज शिवशंकर इण्डस्ट्रीयल इस्टेट यूनिट सं. 5 एवं 6, बिल्डिंग सं. 5, कर्नाटक मिल के नजदीक, वालीव वसई पूर्व, ठाणे-401202	घरेलू और समान प्रयोजनों के लिए स्विचे	भा.मा. 3854 : 1997

[सं. के.प्र.वि./13 : 11]

ए. एस. जामखिंडीकर, कृते वैज्ञानिक 'एफ' एवं प्रमुख (एम डी एम-III)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 30th January, 2013

S.O. 372.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Grant of Licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address (factory) of the party	Product	IS No./Part/Sec Year
1	2	3	4	5	6
1.	3893383	3-12-2012	Brilliant Electricals & Electronics Pvt. Ltd., Gala No. 3, Plot No. 21, Phase 1, Ganesis Indl. Township, Kolegaon, Palghar Thane, Pin-401404.	Switches for domestic and similar purposes.	IS 3854 : 1997
2.	3893484	3-12-2012	Laxmi Ratan Industries, 42/343, Motilal Nagar, Goregaon, West Mumbai-400104.	Switches for domestic and similar purposes.	IS 3854 : 1997
3.	3894082	5-12-2012	Starlite Lighting Ltd. 6, MIDC, Satpur, Nashik, Maharashtra, Pin-422007	Self ballasted lamps for general lighting services (Part 1 & Part 2)	IS 15111 : 2002
4.	3894486	5-12-2012	Plutus Cable (India), Gala No. 24,Ground Floor, Madhuram Indl. Estate, Waliv Village, Thane, Vasai East, Pin-401 201.	PVC insulated cables for working voltages upto and including 1100 V.	IS 694 : 1990
5.	3894587	5-12-2012	Electro-com Enterprises, 297, Patel Indl. Estate, Navapada Road, Near Ajit Glass Bus Stop, Oshiwara, Jogeshwari (West), Mumbai-400102.	Switches for domestic and similar purposes.	IS 3854 : 1997
6.	3895589	7-12-2012	Melkin Industries, Shivshankar Indl. Estate, Unit No. 5 & 6, Building No. 5, Opp. Karnataka Mill, Valiv, Vasai East, Pin-401202	Switches for domestic and similar purposes.	IS 3854 : 1997

[No. CMD/13 : 11]

A.S. JAMKHINDIKAR, Scientist 'F' & Head (MDM-III)

नई दिल्ली, 4 फरवरी, 2013

का. आ. 373.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	2	3	4
1.	आई एस 15636 : 2011 स्वचलन वाहन व्यावसायिक वाहनों के लिए वातिल टायर-आडी और रेडियल प्लाई विशिष्टि (पहला पुनरीक्षण)	–	जून 2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टी ई डी/जी-16]

पी. सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 4th February, 2013

S.O. 373.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been estabished on the date indicated against each :

SCHEDULE

Sl. No.	No., Year & title of the Indian Standards Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date Established
1	2	3	4
1.	IS 15636 : 2012 Automotive vehicles-Pneumatic tyres for commercial vehicles—Diagonal and radial ply—Specification (First Revision)	–	June 2012

Copy of this Standard is availabel for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional offices : New Delhi, Kolkata, Chandigarh, Chennai, [illegible] and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref TED/G-16]

P. C. JOSHI, Scientist 'F' & Head (TED)

नई दिल्ली, 5 फरवरी, 2013

का. आ. 374.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गये मानक(कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
1	2	3	4
1.	आई एस 14272 : 2011 स्वचालित वाहन-टाईप शब्दावली	संशोधन संख्या 1, दिसम्बर, 2012	तत्काल प्रभाव से
2.	आई एस 15901 : 2011 स्वचल वाहन एम 1 श्रेणी के वाहनों पर बंपर फिटमेंट परीक्षण पद्धतियां	संशोधन संख्या 1, दिसम्बर, 2012	तत्काल प्रभाव से

संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे, परवाणु, देहरादून तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टी ई डी/जी-16]
पी.सी. जोशी, वैज्ञानिक 'एफ' एवं प्रमुख (टी ई डी)

New Delhi, the 5th February, 2013

S.O. 374.—*In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the* Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. Year & title of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
1	2	3	4
1.	IS 14272 : 2012 Automotive vehicles—Types terminology	Amendment No. 1, December, 2012	With immediate effect
2.	IS 15901 : 2012 Automotive vehicles—Bumper firment on M1 Category of vehicles—Test methods.	Amendment No. 1, December, 2012	With immediate effect

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabd, Jaipur, Kanpur, Nagpur, Patna, Pune, Parwanoo, Dehradun and Thiruvananthapuram.

[Ref. TED/G-16]
P. C. JOSHI, Scientist 'F' & Head (Transport Engg.)

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नई दिल्ली, 6 फरवरी, 2013

का. आ. 375.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गए हैं वे रद्द कर दिए गए हैं :

अनुसूची

क्रम संख्या	रद्द किये गये मानक(कों) की संख्या, वर्ष और शीर्षक	भारत के राजपत्र भाग 2, खंड 3, उप-खंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
1	2	3	4
1.	आई. एस. 5090 : 1969 ब्लेड प्लेट, मूर टाईप		मानक प्रयोग में नहीं लाया जा रहा है ।
2.	आई. एस. 5170 : 1969 बोल प्लेट शरमन टाईप		वही
3.	आई. एस. 5171 : 1969 बोल प्लेट, केसल, ओस्टीयोटोमी		वही
4.	आई. एस. 5392 : 1969 बोन प्लेट्स, इगर्स टाईप		वही
5.	आई. एस. 5846 : 1970 नेल बोन की विशिष्टि (स्मिथ पीटरसन एवं वाटसन जोनसन पेटर्न)		वही
6.	आई. एस. 6785 : 1982 प्लेट बोन, वेनराईट, ओस्टीयोटोमी की विशिष्टि (पहला पुनरीक्षण)		वही
7.	आई. एस. 6787 : 1973 प्लेट बोन, मैकलाकलिन की विशिष्टि		वही
8.	आई. एस. 6790 : 1973 प्लेट बोन, इंटरट्रोचेन्ट्रिक थ्रोनटोन टाईप की विशिष्टि		वही
9.	आई. एस. 7701 : 1975 प्लेट बोन, स्पाईनल म्यूरिंग विलियम्स		वही
10.	आई. एस. 8326 : 1977 स्टार्टर, स्मिथ पीटरसन नेल, आर्थोपेडिक		वही
11.	आई. एस. 8609 : 1977 नेल हिप जेविट टाईप ओर्थपेडिक उपभोग हेतु		वही
12.	आई. एस. 8921 : 1978 ओगर एक्सट्रेक्शन ज्यूडेट पैटर्न		वही
13.	आई. एस. 10154 : 1982 ब्लेड, प्लेट, आस्टीयोटोमी, वेन राईट-ह्रेमंडस पैटर्न		वही
14.	आई. एस. 10159 : 1982 नेल, सुप्राकोंडिलर जेविटस पैटर्न		वही
15.	आई. एस. 12418 (भाग 4) : 2000, अन्तर्गर्भाशय गर्भनिरोधक युक्तियां-विशिष्टि भाग-4 कापर-टी (200 बी)(दूसरा पुनरीक्षण)		वही
16.	आई. एस. 4313 : 1985 प्लायर्स, प्लेट, डेन्टल के लिए विशिष्टि		वही
17.	आई. एस. 4314 : 1991 आर्थोडॉन्टिक्स प्लास, शंकु साकेट-आयाम तथा परीक्षण (पहला पुनरीक्षण)		वही
18.	आई. एस. 4315 : 1985 प्लास, बार बेन्डिंग, डेन्टल, वाल्डसेक टाईप के लिए विशिष्टि		वही

1	2	3	4
19.	आई. एस. 4319 (भाग 1) : 1986 प्लायर्स, स्टैचिंग और कॉन्टूरिंग, दन्त के लिए विशिष्टि भाग 1 प्लायर्स स्ट्रैचिंग एवं कॉन्टूरिंग		मानक प्रयोग में नहीं लाया जा रहा है ।
20.	आई. एस. 5540 : 1970 प्लायर्स, बैंड फार्मिंग दंत के लिए विशिष्टि		वही
21.	आई. एस. 5828 : 1991 आर्थोडॉन्टिक्स प्लास, कार्यकक्ष-आकृति, आयाम तथा परीक्षण (पहला पुनरीक्षण)		वही
22.	आई. एस. 6857 : 1972 सेपरेटर, डबल-बो, दंत के लिए विशिष्टि		वही
23.	आई. एस. 7139 : 1991 आर्थोडॉन्टिक्स प्लास, नुकीले सिरे वाले, कलैस्प अभिरूपण के लिए आकृति, आयाम एवं परीक्षण		वही
24.	आई. एस. 7141 : 1991 दंत उपकरण-बैंड बनाने वाले पीक्स नमूने के आर्थोडान्टिक्स प्लास-आकृति, आयाम एवं परीक्षण		वही
25.	आई. एस. 7336 : 1974 प्लास, टाई बैक, नेन्स टाईप दंत उपकरण के लिए विशिष्टि		वही
26.	आई. एस. 7339 : 1974 प्लास, एंटीरियर बैंड हटाने वाले, दंत उपकरण के लिए विशिष्टि		वही
27.	आई. एस. 12827 : 1989 गैर ज्वलनशील मेडिकल गैस पाईपलाईन प्रणाली ।		वही

[संदर्भ एम एच डी/जी-3.5]

राकेश कुमार, वैज्ञानिक 'एफ' एवं प्रमुख (एम एच डी)

New Delhi, the 6th February, 2013

S.O. 375.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been withdrawn :

SCHEDULE

Sl No.	No. & Year of the Indian Standards	No. and year of Indian Standards, if any, superseded by the new Indian Standard	Remarks
1	2	3	4
1.	IS 5090 : 1969 Specification for Blade plate, Moore type		Standard being old, obsolete and no more in use.
2.	SI 5170 : 1969 Specification for Bone Plate Sherman type		do
3.	IS 5171 : 1969 Specification for Bone Plate, Kessel, Osteotomy.		do
4.	IS 5392 : 1969 Specification for Bone plates, Eggers type		do
5.	IS 5846 : 1970 Specification for Nails, Bone (Smith Petersen and Watson Jones Patterns)		do

1	2	3	4
6.	IS 6785 : 1982 Specification for Plate, Bone, Wainwright, Osteotomy (First Revision)		Standard being old, obsolete and no more in use.
7.	IS 6787 : 1973 Specification for Plate, Bone, McLaughlin		do
8.	IS 6790 : 1973 Specification for Plate, Bone, Intertrochanteric Thornton type.		do
9.	IS 7701 : 1975 Specification for Plates, bone, Spinal, Meurig Williams.		do
10.	IS 8326 : 1977 Specification for Starter, Smith Peterson Nail, Orthopaedic		do
11.	SI 8609 : 1977 Specification for Nail hip Jewett type for orthopaedic use		do
12.	IS 8921 : 1978 Specification for Augar extractor, Judet's Pattern		do
13.	IS 10154 : 1982 Specification for Blade, Plate, Osteotomy, wainwright Hammond's pattern		do
14.	IS 10159 : 1982 Specification for Nail, Supracondylar, Jewett's pattern		do
15.	IS 12418 (Part 4) : 2000, Intrauterine contraceptive devices Specification, Part 4 copper T (200B) (second revision)		do
16.	IS 4313 : 1985 Specification for Pliers, Plate, Dental		do
17.	IS 4314 : 1991 Orthodontic Pliers, Cone Socket-Shape, Dimension and tests (First revision)		do
18.	IS 4315 : 1985 Specification for Pliers, Bar Bending, dental, Waldsach's type		do
19.	IS 4319 (Part 1) : 1986 Specification for Pliers, Stretching and Contouring, Dental Part 1 Pliers, Stretching and contouring (first revision)		do
20.	IS 5540 : 1970 Specification for Pliers, Band forming, Dental		do
21.	IS 5828 : 1991 Orthodontic Pliers, Work room, shape, dimension & test (first revision)		do
22.	IS 6857 : 1972 Specification for Separator, Double-Bow, Dental.		do
23.	IS 7139 : 1991 Specification for Pliers, Arrowheaded, Clasp forming, Dental.		do
24.	IS 7141 : 1991 Dental instruments-Orthodontic Pliers, band forming, peak's pattern-shape, dimensions and tests.		do
25.	IS 7336 : 1974 Specification for Pliers, Tie Back, Nance type, Dental.		do
26.	IS 7339 : 1988 Specification for Pliers, Anterior Band removing, Dental.		do
27.	IS 12827 : 1989 Non-flammable medical gas pipeline system.		do

[Ref. MHD/G-3.5]

RAKESH KUMAR, Scientist 'F' & Head (MHD)

नई दिल्ली, 6 फरवरी, 2013

का. आ. 376.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आई ई सी 62353 : 2007 चिकित्सीय विद्युत उपस्कर-रिकरेंट परीक्षण एवं चिकित्सीय विद्युत उपस्कर की मरम्मत के बाद परीक्षण	—	दिसम्बर, 2012

इस मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलुरू, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एम एच डी/जी 3.5]
राकेश कुमार, वैज्ञानिक 'एफ' एवं प्रमुख (एम एच डी)

New Delhi, the 6th February, 2013

S.O. 376.—*In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which is given in the Schedule hereto annexed have been established on the date indicated :*

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & year of Indian Standards *if any, superseded by the New* Indian Standard	Date Established
(1)	(2)	(3)	(4)
1.	IS/IEC 62353 : 2007 Medical Electrical Equipment – Recurrent Test and Test after Repair of Medical Electrical *Equipment*	—	December, 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MHD/G-3.5]
RAKESH KUMAR, Scientist 'F' & Head (MHD)

नई दिल्ली, 7 फरवरी, 2013

का. आ. 377.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष माह	लाइसेंसधारी का नाम व एवं पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3902257	1 जनवरी 2013	मैसर्स प्रभात एग्रो इन्डस्ट्रीज नेहरूनगर मैन रोड, धेबर रोड (साउथ), राजकोट, गुजरात-360002	साफ ठन्डे पानी के लिए उर्ध्व टर्बो इन मिश्रित और अक्षीय प्रवाह पंपों की विशिष्टि	1710	0	0	1989
2.	3902459	1 जनवरी 2013	सोनी रसीकलाल जमनदास लोठीया, मैन बाजार पजोड, तालुका मानवडर, जिला जुनागढ़, पजोड, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
3.	3902661	1 जनवरी 2013	शक्ति ज्वैलर्स शायानी पोल के पीछे, शाक मार्केट, वाधवान, जिला सुरेन्द्रनगर, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
4.	3902858	1 जनवरी 2013	मगनलाल देवराज ज्वेलर्स सराफ बाजार, धोराजी, जिला राजकोट, गुजरात-360410	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
5.	3903865	3 जनवरी 2013	रैनबो पंप प्लाट नं. जी 604/605, मेटोडा जी आई डी सी, तालुका लौधीका, जिला राजकोट, गुजरात-360024	साफ ठन्डे पानी के लिए उर्ध्व टर्बाइन मिश्रित और अक्षीय प्रवाह पंपों की विशिष्टि	1710	0	0	1989
6.	3903966	3 जनवरी 2013	मैसर्स अमृत पम्प किशन टेलर मार्ग, अमर नगर रोड, बहुचर विद्यालय के सामने, राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
7.	3905566	3 जनवरी 2013	सोनी हरीलाल कोकुलभाई मैन बाजार भांडुरी, भांडुरी, तालुका जुनागढ़ गुजरात-362245	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
8.	3907974	9 जनवरी 2013	मैसर्स अमेरीकन फुडस प्राइवेट लिमिटेड, सर्वे नं. 298, शांतिधाम मंदिर के पास, ओर्चेय फार्म के सामने, एन एच 8 बी राजकोट, गोंडल राजमार्ग, शापर वेराबल, जिला राजकोट, गुजरात-360024	पैकेजबन्द पेयजल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
9.	3908067	9 जनवरी 2013	मैसर्स किशान एग्रो इन्डस्ट्रीज गोकुलधाम मेन रोड, निरव कोम्पलैक्स के सामने, सम्राट इन्डस्ट्रीयल एरिया राजकोट, गुजरात-360004	साफ ठन्डे पानी के लिए उर्ध्व टर्बाइन मिश्रित और अक्षीय प्रवाह पंपों की विशिष्ट	1710	0	0	1989
10.	3909776	15 जनवरी 2013	मैसर्स श्री नाथजी बेवरेजीस सी. पी. पान हाउस, करणसिंह जी मैन रोड, राजकोट, गुजरात-360001	पैकेजबन्द पेयजल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
11.	3910357	15 जनवरी 2013	हाईटेक अग्रो इन्डस्ट्रीज वेकरीया परा, अमरेली रोड, धारी, जिला अमरेली, गुजरात-365640	साफ ठन्डे पानी के लिए उर्ध्व टर्बाइन मिश्रित और अक्षीय प्रवाह पंपों की विशिष्ट	1710	0	0	1989
12.	3910660	18 जनवरी 2013	मैसर्स प्योर अलोयस प्रा. लिमिटेड (रोलींग मील डिवीजन), सिहोर घांघली रोड, नम्बर 214, आर अेस नम्बर 225/7, पैकी प्लॉट नम्बर 1 & 2, गांव घांघली, तालुका सिहोर, जिला भावनगर, गुजरात-364240	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
13.	3911561	22 जनवरी 2013	एम डी ज्वेलर्स बोरा बाजार, जिला भावनगर, गुजरात-364001	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
14.	3911662	23 जनवरी 2013	मैसर्स छतरिया फायरटेक इन्डस्ट्रीस 89 जी. आई. डी. सी. एस्टेट, महुवा, जिला भावगनर, गुजरात-364290	अग्नि होज प्रदान युगमन शाखा पाईप नोजल और नोजल पाने की विशिष्टि	903	0	0	1993
15.	3911965	24 जनवरी 2013	श्री इश्वर एन्टरप्राईज सर्वे नं. 194, इश्वर इन्डस्ट्रीज एरिया, कोठारीया सोल्वेट, गोंडल रोड, कोठरीया रोड, राजकोट, गुजरात	निमज्जनीय पम्प सेट	8034	0	0	2002
16.	3913969	29 जनवरी 2013	मैसर्स नवकार मिनरल वाटर I बी 3 भाग्योदय सोसायटी, पुराना तलाजा जकातनाका, मंगल मुर्ती टेनामेन्ट के सामने, भावनगर, गुजरात-364002	पैकेजबन्द पेयजल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
17.	3914264	29 जनवरी 2013	मैसर्स अंकुर चेमफुड यूनिट 4 सर्वे नम्बर 84, गांव वरसाणा, तालुका अजार, जिला कच्छ, गुजरात	साधारण नमक लौट प्रबलित विशिष्टि	12981	0	0	1991

[सं. के. प्र. वि./13 : 11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th February, 2013

S.O. 377.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following Schedule :

SCHEDULE

Sl No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Section	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3902257	1-1-2013	M/s Prabhat Agro Industries Nehru Nagar, Main Road, Dhebar Road (South), Rajkot, Gujarat-360002	Specification for Pumps – Vertical Turbine Mixed and Axial Flow, for Clear Cold Water	1710	0	0	1989

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2.	3902459	1-1-2013	M/s Soni Rashiklal Jamnadas Lodhiya, Main Bazar Pajod, Taluka Manavadar, District Junagadh, Pajod, District : Junagadh, Gujarat-362620	Gold and Gold Alloys, Jewellery/Artefacts – Fineness and Marking	1417	0	0	1999
3.	3902661	1-1-2013	M/s Shakti Jewellers Shakti Jewellers, Out of Shiyani Pole, Near Shak Market, Wadhwan, District Surendranagar, Gujarat-363030	Gold and Gold Alloys, Jewellery/Artefacts – Fineness and Marking	1417	0	0	1999
4.	3902858	1-1-2013	M/s Maganlal Devraj Jewellers, Maganlal Devraj Jewellers, Sharaf Bajar, Dhoraji, District : Rajkot Gujarat-360410	Gold and Gold Alloys, Jewellery/Artefacts – Fineness and Marking	1417	0	0	1999
5.	3903865	3-1-2013	M/s Rainbow Pumps Plot No. G 604/605, Metoda G.I.D.C., Taluka Lodhika, District Rajkot, Gujarat-360024	Specification for Pumps – Vertical Turbine Mixed and Axial Flow, for Clear Cold Water	1710	0	0	1989
6.	3903966	3-1-2013	M/s Amrut Pump Kishan Marg, Amar Nagar Road, Opposite Bahuchar Vidhyalay, District : Rajkot Gujarat-360004	Submersible Pumpsets	8034	0	0	2002
7.	3905566	3-1-2013	M/s Soni Harilal Kokulbhai Main Bazar, Bhanduri, At Bhanduri, Taluka – Maliya Hatina, District – Junagadh, Bhanduri, Gujarat-362245	Gold and Gold Alloys, Jewellery/Artefacts – Fineness and Marking	1417	0	0	1999
8.	3907974	9-1-2013	M/s American Foods Pvt. Ltd. Survey No. 298, Beside Santidham Temple, Opposite Orchev Pharma, N/H 8B, Rajkot, Gondal Highway, Shapar Veraval, District : Rajkot, Gujarat	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543	0	0	2004

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
9.	3908067	9-1-2013	M/s Kishan Agro Industries Gokuldham Main Road, Opposite Nirav Complex. Samrat Industrial Area, District : Rajkot, Gujarat-360004	Specification for Pumps – Vertical Turbine Mixed and Axial Flow, for Clear Cold Water	1710	0	0	1989
10.	3909776	15-1-2013	M/s Shree Nathji Beverages C. P. Pan House, Karansinhji Main Road, District : Rajkot, Gujarat-360001	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543	0	0	2004
11.	3910357	15-1-2013	M/s Hi Tec Agro Industries Vekariya Para, Amreli Road, Dhari, District : Amreli, Gujarat-365640	Specification for Pumps – Vertical Turbine Mixed and Axial Flow, for Clear Cold Water	1710	0	0	1989
12.	3910660	18-1-2013	M/s Pure Alloys Pvt. Ltd. Sihor Ghanghali Road No. 214, R. S. No. 225-7, Paiki, Plot No. 1 & 2, Ghanghali, Taluka Sihor, District : Bhavnagar, Gujarat-364001	Specification for high strength deformed steel bars and wires for concrete reinforcement	1786	0	0	2008
13.	3911561	22-1-2013	M/s M D Jewellers Vora Bazar, District : Bhavnagar, Gujarat-364001	Gold and Gold Alloys, Jewellery/Artefacts – Fineness and Marking	1417	0	0	1999
14.	3911662	23-1-2013	M/s Chhatariya Firetech Industries 89, G.I.D.C. Estate, Mahuva, District : Bhavnagar, Gujarat-364290	Specification for fire hose delivery couplings, branch pipe, nozzles and nozzle spanner	903	0	0	1993
15.	3911965	24-1-2013	M/s Shree Ishwar Enterprise Survey No. 194, Ishwar Industries Area, Near Harikrishna Solvant, Kothariya Solvant, Gondal Road, Kothariya Road, Rajkot, Gujarat	Submersible Pumpsets	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
16.	3913969	29-1-2013	M/s Navkar Mineral Water 1/B3, Bhagyodaya Society, Old Talaja Jakatnaka, Opposite Mangal Murti Tenament, District : Bhavnagar, Gujarat-364002	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543	0	0	2004
17.	3914264	29-1-2013	M/s Ankur Chemfood Ltd. Survey No. 369, N.H. 8-A, Chopadva, Taluka Bhachau, District : Kachchh, Gujarat-370140	Common Salt – Iron Fortified – Specification	12981	0	0	1991

[No. CMD/13 : 11]

M. RADHAKRISHNA, Scientist 'F' and Head

कोयला मंत्रालय

नई दिल्ली, 11 फरवरी, 2013

का.आ. 378.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उप-धारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 1567, तारीख 26 अप्रैल, 2012, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 5 मई, 2012 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट 128.215 हेक्टर (लगभग) या 316.82 एकड़ (लगभग) माप वाली भूमि और उस पर के भू-सतह अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी, ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार, का पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और मध्य प्रदेश सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 128.215 हेक्टर (लगभग) या 316.82 एकड़ (लगभग) माप वाली भूमि के भू-सतह अधिकार अर्जित किए जाने चाहिए;

अतः, अब, उक्त अधिनियम की धारा 9 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 128.215 हेक्टर (लगभग) या 316.82 एकड़ (लगभग) माप वाली भूमि के भू-सतह अधिकार अर्जित किए जाते हैं;

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/429 तारीख 11 जून, 2012 का निरीक्षण कलेक्टर, अनुपपुर (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, कांउसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफिल्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है ।

अनुसूची

सीतलधारा – कुरजा भूमिगत खान

हसदेव क्षेत्र

जिला–अनूपपूर (मध्य प्रदेश)

(रेखांक संख्या–एसईसीएल/बीएसपी/जीएम/पीएलजी/भूमि/429 तारीख 11 जून, 2012)

भू-सतह अधिकार :

क्रम सं	ग्राम का नाम	पटवारी हल्का नम्बर	जनरल नम्बर	तहसील	जिला	क्षेत्र हेक्टर में	क्षेत्र एकड़ में	टिप्पण
1.	परसापानी	20	586	कोतमा	अनूपपुर	81.700	201.88	भाग
2.	नक्तीटोला	20	516	कोतमा	अनूपपुर	46.515	114.94	भाग

कुल क्षेत्र : 128.215 हेक्टर (लगभग) या 316.82 एकड़ (लगभग)

1. ग्राम परसापानी (भाग) में अर्जित किए जाने वाले प्लाट संख्या :

1 से 59, 60(भाग), 61(भाग), 65(भाग) और 66.

2. ग्राम नक्तीटोला (भाग) में अर्जित किए जाने वाले प्लाट संख्या :

1 से 3, 5(भाग), 6 से 12, 14(भाग), 24(भाग), 25(भाग), 26, 27 28(भाग), 29, 31(भाग), 69(भाग), 70, 71(भाग), 72 73(भाग), 74 और 75(भाग).

सीमा वर्णन :–

क–ख रेखा ग्राम नक्तीटोला–रेवंडा के सम्मिलित सीमा पर बिन्दु "क" से आरंभ होती है और ग्राम नक्तीटोला -- रेवंडा, नक्तीटोला–कोरजा, परसापानी–कोरजा के भागत: सम्मिलित सीमा से गुजरती हुई ग्राम परसापानी–कोरजा के सम्मिलित सीमा में बिन्दु "ख" पर मिलती है ।

ख–ग रेखा ग्राम परसापानी – दलदल के भागत: सम्मिलित सीमा पर बिन्दु "ख" से गुजरती हुई ग्राम परसापानी–दलदल के सम्मिलित सीमा में बिन्दु "ग" पर मिलती है ।

ग–घ रेखा ग्राम परसापानी के सम्मिलित सीमा में बिन्दु "ग" से आरंभ होती है और प्लाट संख्या 61, 60, 63, 65 से होकर 65, 66 के पूर्वी सीमा से गुरजती हुई ग्राम परसापानी – नक्तीटोला के सम्मिलित सीमा में बिन्दु "घ" पर मिलती है ।

घ–क रेखा ग्राम नक्तीटोला के सम्मिलित सीमा में बिन्दु "घ" से आरंभ होती है और प्लाट संख्या 71, 75, 73, 69, 31, 28, 24, 25, 5, 10 से होती हुई और आरंभिक बिन्दु "क" पर मिलती है ।

[फा. सं. 43015/21/2010-पीआरआईडब्ल्यू-I]

वी. एस. राणा, अवर सचिव

MINISTRY OF COAL

New Delhi, the 11th February, 2013

S.O. 378.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 1567 dated the 26th April, 2012, issued under Sub-section (1) of Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section 3, Sub-section (ii) dated the 5th May, 2012 , the Central Government gave notice of its intention to acquire 128.215 hectares (approximately) or 316.82 acres (approximately) land as surface rights in or over such lands specified in the Schedule appended to that notification ;

And whereas, the competent authority in pursuance of Section 8 of the said Act has made his report to the Central Government ;

And whereas, the Central Government after considering the aforesaid report and after consulting the Government of Madhya Pradesh, is satisfied that the lands measuring 128.215 hectares (approximately) or 316.82 acres (approximately) as surface rights in or over such lands as described in the Schedule appended hereto, should be acquired ;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 9 of the said Act, the Central Government hereby declares that the land measuring 128.215 hectares (approximately) or 316.82 acres (approximately) as surface rights in or over such lands as described in the aforesaid Schedule, are hereby acquired.

The plan bearing number SECL/BSP/GM/PLG/LAND/429 dated the 11th June, 2012 of the area covered by this notification may be inspected at the Office of the Collector, Anuppur (Madhya Pradesh) or at the Office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

SCHEDULE

Sheetaldhara–Kurja Underground Mine Hasdeo Area

District– Anuppur (Madhya Pradesh)

(Plan bearing number SECL/BSP/GM/PLG/LAND/429 dated the 11th June, 2012)

Surface Rights :

Sl. No.	Name of Village	Patwari halka Number	General Number	Tehsil	District	Area in hectares	Area in acres	Remarks
1.	Parsapani	20	586	Kotma	Anuppur	81.700	201.88	Part
2.	Naktitola	20	516	Kotma	Anuppur	46.515	114.94	Part

Total :– 128.215 hectares (approximately)
or 316.82 acres (approximately)

1. Plot Numbers to be acquire in village Parsapani (Part) :

1 to 59, 60(P), 61(P), 65(P) and 66.

2. Plot Numbers to be acquire in village Naktitola (Part) :

1 to 3, 5(P), 6 to 12, 14(P), 24(P), 25(P), 26, 27, 28(P), 29, 31(P), 69(P), 70, 71(P), 72, 73(P), 74 and 75(P).

Boundary Description :

A–B Line starts from point 'A' on the common boundary of villages Naktitola–Rewanda and passes along the partly common boundary of villages Naktitola–Rewanda, Naktitola–Korja, Parsapani–Korja and meets at point 'B' on the common boundary of villages Parsapani–Korja.

B–C Line starts from point 'B' and passes along the partly common boundary of villages Parsapani–daldal and meets at point 'C' on the common boundary of villages Parsapani–Daldal.

C–D Line starts from point 'C' and passes in village Parsapani through plot numbers 61, 60, 63, 65, along eastern boundary of plot numbers 65, 66 and meets at point 'D' on the common boundary of villages Parsapani-Naktitola.

D–A Line starts from point 'D' and passes in village Naktitola through plot numbers 71, 75, 73, 69, 31, 28, 24, 25, 5, 10 and meets at starting point 'A'.

[F. No. 43015/21/2010-PRIW-I]
V. S. RANA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 जनवरी, 2013

का. आ. 379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 297/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/94/2004-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th January, 2013

S.O. 379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 297/2004) of the Central Government Industrial Tribunal/Labour Court-I, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 15-1-2013.

[No. L-12011/94/2004-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI S. P. SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case ID No. 297 of 2004

The General Secretary,
Central Bank of India Employees' Union,
3296, Sector-19 D,
Chandigarh ... Workman

Versus

The Regional Manager,
Central Bank of India,
427-A, Regional Office,
Ghumar Mandi,
Ludhiana ... Management

APPEARANCES :

For the workman : Shri Yogesh Jain.

For the management : Shri N. K. Zakhmi.

AWARD

Passed on 3rd January, 2013

1. Central Govt. vide letter No. L-12011/94/2004-IR (B-II) dated 29-9-2004 has referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Central Bank of India, Ludhiana in imposing the penalty of reduction by two stages for two years in the time scale of pay and recovery of Rs. 1,50,000 on the workman Shri Ajit Kumar Jain is illegal and unjustified ? If so what relief the aggrieved workman is entitled to and from which date ?"

2. Brief facts of the case according to the petitioner workman are that while working as Clerk in Millar Ganj Branch of Central Bank of India, he was served with a memo dated 23-8-1999 to the effect that while working as officiating in-charge Cash Department in the evening on 20-8-1999, he handed over the charge to Sh. J. S. Riar but did not get his acknowledgement on the cash memo in lieu of taking over the charge. Workman submitted reply dated 27-8-1999 stating therein that entire cash balance was duly checked and verified by J. S. Riar in the presence of Sh. Karan Aggarwal, Manager (Operation) and cash keys were handed over to him as the case safe was under dual charge of J. S. Riar and Karan Aggarwal. Thereafter, he was given a charge-sheet dated 4-9-2000 which was quite different from the memo dated 23-8-1999. It is submitted by the workman that bank management has changed the charge under the pressure of majority Union to whom Mr. J. S. Rair main accused belongs as the member and workman being the member of minority Union was victimized. It is pleaded that Sh. Major Singh was appointed Inquiry Officer who held the inquiry and submitted his report to Disciplinary Authority with copy to the workman. Show-cause notice was issued to workman with the proposed punishment of reduction of two stages for two years in the time scale of pay and disciplinary authority who is Regional Manager, passed the order dated 22-5-2002 imposing the punishment mentioned above. The Regional Manager also issued memo dated 22-5-2002 directing him to deposit 1,50,000 in the bank. Workman filed an appeal to DGM Central Bank of India, Chandigarh who without offering him personal hearing rejected the appeal. It is submitted by the workman that order to recover Rs. 1,50,000 and imposing the punishment of reduction of two stages for two years and inquiry conducted are against the principle of natural justice and the Inquiry Officer ignored the statement of the bank witnesses and pleadings of the workman while submitting his finding to the disciplinary authority, the main culprit J. S. Riar was let off under the pressure of majority Union whereas the workman was victimized. Similar, charges were also levelled against Sh. Karan Aggarwal and J. S. Riar but no recovery has been made from them thus, great injustice has been caused to workman. The workman prayed that order No. PSRS/

DA/42/2002-03/49 dated 22-5-2002 imposing the punishment of reduction by two stages for two years in the time scale of pay and order No. PSRS/DA/42/2002-03/50 dated 22-5-2002 imposing the punishment of recovery may be quashed and he may be granted arrears along with 18% interest with all the consequential benefits along with costs.

3. Written statement filed by the management. Preliminary objection has been taken that the workman committed certain acts of misconduct for which, he was charged-sheeted as he indulged in fraudulent act as he unauthorizedly, illegally and fraudulently pocketed the money with himself with an intention to cause loss to the bank. It is the case of the management that while working as incharge-cash department in officiating capacity, he kept 3 packets of Rs. 500 denomination notes in Chief Cashier's Cabin before closing the cash on 20-8-1999, closed the cash which was short by Rs. 1,50,000. After closing the cash, the keys were handed over to Sh. J. S. Riar. On the cash memo dated 20-8-1999, workman made a remark under his signatures in respect of handing over the cash to Sh. J. S. Riar who, has not signed on the cash memo in respect of having taken over the charge. The workman who was a habitual late comer came early on 21-8-1999 at about 9.30 a.m., went to cash cabin directly and manage to remove those 3 packets of Rs. 500 denomination notes from the cash cabin as well as from branch. This act of the workman is prejudicial to bank interest for which he was charged-sheeted. Inquiry Officer was appointed who conducted fair and proper inquiry and provided full opportunity of defence to the workman, submitted his report to the disciplinary authority and disciplinary authority, taking a lenient view imposed the punishment of reduction of two stages for two years in the time scale-pay and recovery of Rs. 1,50,000 from the workman. The action of the management inflicting the punishment is legal, just, proper and quite commensurate with the gravity of the misconduct committed by the workman. His appeal was also rejected after going through the entire record by the Appellate Authoirty. It is also the case of the management, that management reserve the right to prove the misconduct of the workman before this Hon'ble Court thus if Hon'ble Court feels any infirmity in the inquiry by leading oral as well as documentary evidence. On merits it is pleaded that charges against the workman were specific and clear and it is specifically denied by the management that the charge-sheet was issued under the pressure of the majority union. Other contentions of the workman were denied by the management in the written statement. It is specifically pleaded that orders in the instant case are not discriminatory. It is prayed that claim of the petitioner may be dismissed with heavy cost.

4. The workman filed replication, reiterating the claim made in the claim statement.

5. Vide order dated 6-7-2010 my predecessor held that fair, proper and reasonable inquiry was conducted. There was no violation of any statutory rules while conducting the inquiry and there was no violation of any rule of principle of natural justice. The parties were afforded the opportunity for adducing the evidence on the following facts :

(1) The parties are at liberty to adduce any evidence on perversity of the enquiry office or the disciplinary authority in decision making.

(2) The parties are at liberty to adduce any evidence on quantum of punishment.

(3) As stated in the body of this order, the workman is also afforded the opportunity to adduce evidence on the issue of prejudice caused to him on the ground of non-supplying the reports of preliminary enquiry, if any,

6. The workman on the above order filed his own affidavit in evidence. He was examined and cross-examined. Management also produced Anil Kumar Millu, who tendered his affidavit as Ex. M1 and filed all the inquiry proceeding as M2. He has also produced inquiry proceeding and report of the Inquiry Officer conducted against Karan Aggarwal as M3.

7. I have heard the parties at length and gone through the entire disciplinary proceedings conducted against the workman and also the proceedings held against Sh. Karan Aggarwal. Other relevant record also filed by the management. Both parties also filed certain documents.

8. Learned counsel for the workman during arguments submitted that the workman handed over the charge of the cash to Sh. J. S. Riar in the presence of Karan Aggarwal, Manager (Operation) and has written on the cash memo "cash handed over to Mr. J. S. Riar" and cash was checked by Mr. J. S. Riar in the presence of Karan Aggarwal physically and one set of key was taken by J. S. Riar and other set of keys was by Karan Aggarwal. On the next day that is 21-8-1999 the cash was opened by Mr. J. S. Riar and Karan Aggarwal and whole day transactions were carried out by Mr. J. S. Riar while working as cash incharge and it was only about 1 : 30 p.m., shortage of 1,50,000 was reported by Mr. Riar while tallying the cash. Higher authorities were informed informed about the shortage and at that moment it was decided to register FIR. But strangely enough, the workman was issued memo dated 23-8-1999 with the plea that he did not get the acknowledgement of Mr. Riar on the cash memo in view of taking over the charge of cash. It is further submitted during the arguments by the learned counsel of the workman that on the basis of preliminary investigations Mr. J. S. Riar was placed under suspension and FIR was lodged and Mr. Riar also sought the anticipatory bail from the Court which was rejected. It is further argued that

Mr. Riar was incharge of the cash on the day of incident and the workman was victimized just because being the member of the minority union and Mr. Riar was member of the majority union. A charge-sheet was also given to Karan Aggarwal who was holding dual charge of the cash on 20-8-1999. The co-accused Karan Aggarwal was exonerated by the management. It is also submitted by the learned counsel of the workman that the management's witness himself deposes as under :

> "The person who tallied the cash is also in possession of the keys. He also signed the cash memo of the bank. Mr. J. S. Riar was given the charge of officiating cashier of the branch w.e.f. 20-8-1999 was closed in the presence of Mr. Karan Aggarwal and Mr. Jain. Mr. Karan Aggarwal has not reported any shortage of cash on 20-8-1999."

9. It is further admitted by the witness of the management that there is every possibility of shortage of cash of being paid an amount twice to any customer and he also not aware of what happened to the FIR recorded against Mr. Riar. It is further argued that the workman was victimized by the management and real accused Mr. J. S. Riar was allowed to go scot free by the management of the bank and victimized the workman by inflicting two set of punishment i.e. stoppage of two increment in the reduction by two stages for two years in the time-scale and recovery of Rs. 1,50,000. The relevant rules/provision does not provide to punishment for the alleged proven act of misconduct. It is prayed by the learned counsel for the workman that workman was innocent and no case is made out against the workman and both the punishment may be set aside.

10. Besides, filing written argument, learned counsel for the management submitted during oral arguments that fair and proper inquiry was held against the workman. He was given full opportunity to defend himself during inquiry and the charges levelled against him were proved during inquiry. There is no perversity in the report of the Inquiry Officer. There is no complaint whatsoever was made by the workman against the Inquiry Officer that he was not allowed the opportunity to defend himself. The Inquiry Officer in his report stated that charge 1(part A) was not proved, (part B) was partially proved, (part C) not proved and charge No. 2 was not proved. Charge No. 3 was proved. The report of the Inquiry Officer is based on documentary evidence and statement of witnesses. Therefore, the punishment imposed upon the workman commensurate with the misconduct for which the workman was found guilty. After conducting investigation against Mr. Riar, it was found that he was negligent in performing his duty. It is further argued that this Hon'ble Tribunal has no jurisdiction to appraise evidence to substitute its own finding on the disciplinary authority. This Tribunal cannot sit as Appellate Authority as per settled principle of law and workman is not entitled to any relief. The management also placed reliance upon the judgment of Bombay High Court reported as M/s Permanent Magnate Vs. USP and Others 2005 LLR 1154 wherein it is held that an inquiry will neighter be illegal nor unfair when the delinquent workman has participated and cross-examined the witness of the management besides leading his evidence as well as his own statement in inquiry.

11. On behalf of the workman, it is submitted that the memo dated 23-8-1999 issued to the workman was containing the different allegations whereas the charge sheet issued on 4-9-2000 was on different charges. The management in reply to this discrepancy submitted that the memo was issued for not taking the signatures of the official on cash memo in lieu of taking over the charge whereas the charge sheet was issued after revealing the fact of cash shortage of Rs. 1,50,000. This discrepancy does not cause any prejudice to the workman.

12. Learned counsel for the workman also submitted that copy of the preliminary enquiry report was not given to the workman. In this context the learned counsel for the management replied that the preliminary enquiry is just a fact finding enquiry and non-supply of copy of the preliminary enquiry report is not prejudicial in any way to the workman. Learned predecessor vide his order dated 6-7-2010 also held that the preliminary enquiry report is a fact finding report and no prejudiced has been caused to the workman if the copy of the same was not supplied to the workman.

13. From perusal of the enquiry report it appears that the workman failed to obtain the signatures of the bank official to whom the workman handed over the charge on 20-8-1999. It is also revealed from the evidence on record that the workman came to bank at 9 : 30 AM on 21-8-1999 and taken away the cash of Rs. 1,50,000 from the chief cashier's cabin.

14. Learned counsel for the workman also submitted during arguments that workman cannot be punished twice on one charge. Management submitted that the recovery of Rs. 1,50,000 was must as it was the shortage of cash for which the workman was accountable and for the misconduct of the workman the punishment of reduction of two stages for two years in the time scale of pay was awarded.

15. Considering the entire material on record and going through all the evidence oral as well as documentary, I am of the view that workman failed to prove any perversity against the enquiry report or the punishment. Thus the action of the management of Central Bank of India, Ludhiana in imposing the penalty of reduction by two stages for two years in the time scale of pay and recovery of Rs. 1,50,000 on the workman Shri Ajit Kumar Jain is legal and justified and workman is not entitled to

any relief. The reference is answered accordingly. Central Govt. be informed.

Chandigarh.

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का. आ. 380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्पोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 191/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/87/99-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 15th January, 2013

S.O. 380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 191/2011) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workman, which was received by the Central Government on 15-1-2013.

[No. L-12012/87/99-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, *CENTRAL GOVERNMENT* INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS *COMPLEX, DELHI*

I. D. No. 191/2011

Shri Rajesh Tiwari,
Site-2, Flat No. 155,
Near "C' Block,
Vikaspuri,
New Delhi-110018 ... Workman

Versus

The Regional Manager,
Corporationl Bank,
Regional Office,
Arya Samaj Road,
Karol Bagh, New Delhi ... Management

AWARD

A sub staff appointed by Corporation Bank (in short the bank), absented himself from his duties in an unauthorized manner since 17th October, 1994. On 26th October, 1994, he submitted an application for leave for 12 days, which application was declined by the bank. A talegram was sent to him on 2-11-94, calling upon him to report for his duties. However he opted not to pay any head to the advice of his superior officer. Communications were sent to him from time to time calling upon him to join his duties. He joined duties on 30-11-95 and absented thereafter w.e.f. 1-12-95. Material was collected by the bank to the effect that the sub staff was doing business without permission from the Competent Authority. A charge sheet was served upon him, which was followed by a domestic enquiry. On consideration of report submitted by the Enquiry Officer, the Disciplinary Authority awarded punishment of discharge from service to the sub-staff Aggrieved by the order of discharge from service, he raised a demand for reinstatement in service of the bank. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. The bank contested his claim and as such conciliation proceedings ended into a failure. On consideration of failure report, submitted by Conciliation Officer, the appropriate Govt. referred the dispute to this Tribunal for adjudication, vide order No. L-12012/87/99-IR(B-II) New Delhi, dated 16-7-99 with following terms :

> "Whether the action of the management of Regional Manager, Corporation Bank. Regional Office, Arya Samaj Road, Karol Bagh, New Delhi, in discharging from service to Shri Rajesh Tiwari, Ex-Peon, Bhikaji Cama Place branch w.e.f. 17-7-97 is proper and justified ? If not, then what benefit and relief the workman is entitled to ?"

2. Claim statement was filed by the sub-staff, namely, Shri Rajesh Tewari pleading that he joined services of the bank in Nov., 1987. His services were confirmed by the bank. He is physically handicapped person. He was serving the bank in satisfactory manner. Unfortunately his wife fell seriously ill on 17-10-1994. Since there was none to look after her, he had to absent himself from his duties. He sent an application for leave only on 26-10-94, seeking leave for 12 days. Illness of his wife prolonged and he sent application for extension of leave on 28-11-94. His application was refused by the bank. He was called upon to join his duties. When he went to join his duties, he was not permitted to do so. He wrote letters to the bank on 13-6-95, 7-8-95, 7-10-95 and 31-10-95. These letters were replied by the bank, claiming that he was absent from his duties. He was advised to join his duties or appear before the bank's doctor, if he was sick. However when he went to join his duties, he was not allowed to do so. In response to letter dated 16-11-95, he went to the bank premises on 30-11-95 and submitted his joining report. However he was turned out of the bank premises and forced to absent himself again w.e.f. 1-12-95.

3. The claimant projects that an enquiry was instituted against him. He details that no convincing evidence could be brought before the Enquiry Officer, relating to his involvement in any business. According to him the evidence brought before the Enquiry Officer was weak and infirm. He declares that no conclusion as to his involvement in any business is possible out of the evidence brought before the Enquiry Officer. According to him, report of the Enquiry Officer is perverse. He also details that the Enquiry Officer was well versed in law and he was no match to Enquiry Officer as well as the Presenting Officer. He could not get proper opportunity to defend himself. According to him, punishment of discharge from service is arbitrary, illegal and uncalled for. The bank ought to have treated him as voluntarily retired from service, in terms of para 17 of 5th Bipartite Settlement. He claims reinstatement in service of the bank with continuity and full back wages.

4. The bank contests the claim pleading that the claimant started absenting himself from his duties, after confirmation of his services. His leave record is dismissal. Once he was cautioned for his absence, vide letter dated 1-1-91. Subsequently he was punished by way of stoppage of his future increments, vide order dated 14-3-95, for his unauthorised absence. On 15-7-94 he was issued a notice under clause 17 of 5th Bipartite Settlement for remaining absent without leave for a period of more than 90 days. Subsequently, he again went on unauthorised leave w.e.f. 17-10-94. He remained absent till 20-1-96, except for one day, when he joined his duties on 30-11-95, a charge sheet was served upon him. He was given full opportunities to defend himself in the enquiry. During the period of his absence, various communications were sent to him, calling upon him to join his duties but in vain. The Enquiry Officer conducted the enquiry in fair manner, following principles of natural justice. The report of the Enquiry Officer was in consonance with the evidence. Punishment awarded to him, commensurate to his misconduct. Appeal preferred by him also came to be dismissed. There is no case in favour of the claimant to seek reinstatement in service. His claim is devoid of merits, hence deserves dismissal.

5. On pleading of the parties, following issues were settled by my ld. predecessor :

(i) Whether the workman was in the habit of remaining absent from duty and indulged himself in business activities, as averred in the written statement ?

(ii) Whether the enquiry conducted by the Bank was just and fair ?

(iii) As per terms of reference.

(iv) Relief.

6. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi, dated 11-2-2008, the appropriate Government transferred the case to Central Government Industrial Tribunal No. II, New Delhi, for adjudication. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi, dated 30-3-2011, the case was re-transferred by the appropriate Government to this Tribunal for adjudication.

7. Issues relating to virus of the enquiry was treated as preliminary issue. Claimant examined himself to assail virus of the enquiry. The bank examined Shri Sudhir Pradhan to defend the enquiry. On consideration of evidence adduced by the parties, the preliminary issue was decided in favour of the bank and against the claimant, vide order dated 16-9-2011.

8. Arguments on proportionality of punishment were heard at the bar. Shri R. K. Patra, authorized representative, advanced arguments on behalf of the claimant. Ms. Ananya Dutta Majumdar, authorized representative, presented facts on behalf the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows :

Issue No. 1

9. Since enquiry was held to be in consonance with the principles of natural justice wherein findings were recorded to the effect that the claimant remained absent without any reasonable cause from 17-10-94 to 29-11-95 and from 1-12-95 till the end of December 95 and was carrying on business under the name and style of M/s Ashu Properties, Builders, Tours and Travels, the issue does not survive. Consequently there is no necessity to delve the facts relating to those propositions. Ordered accordingly.

Issue No. 3

10. Prior to introduction of Section 11A of the Act, adjudicatory powers of the Tribunal were articulated in Buckingham & Carnatak Company [1951 (2) LLJ 314]. Four standards were delineated by the Labour Appellate Tribunal in the above case to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited [1958 (1) LLJ 260], without any acknowledgement to the precedent in Buckingham & Carnatic case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to

see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances as industrial adjudicator can interfere with the disciplinary action taken by the employer : (1) when there is want of good faith (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

11. Enunciation (1) and (2), referred above, are addressed to the bona fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona-fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

12. In *Ramswarth* Sinha (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to jutify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in Motipur Sugar Factory Pvt. Ltd. [1965 (2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In Ritz Theatre [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in Bharat Sugar Mills Ltd. [1961 (11) LLJ 644].

13. In Delhi Cloth and General Mills Company [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles :

> "(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.
>
> (2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.
>
> (3) When the management, relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when he holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.
>
> (4) When the domestic enquiry has been held by the management and the management relies on the

same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

14. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (supra), the Parliament inserted Section 11-A in the Act, which came into force w.e.f. 15th of December, 1971. In the statement of objects and reasons for inserting Section 11-A, it was stated :

"In Indian Iron and Steel Company Limited and Another Vs. Their Workmen (AIR 1958 S. C. 130 at p. 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No. 119) concerning 'Termination of employment at the initiative of the employer' adopted in June, 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensastion or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal or a workman should not be limited and that the Tribunal should have the power, in cases

wherever necessasry to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947."

15. After insertion of Section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973) (1) LLJ 278] in the following propositions :

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen, within the judicial decision of a Labour Court of Tribunal."

16. Jurisdiction to interfere with the punishment is also not confined to the case where punishment is shockingly disproportionate to the act of the mis-conduct. The Tribunal has power of substituting its own measure of punishment in place of managerial wisdom. Change in legal position, post introduction of Section 11A of the Act has been effectively summarized in the case of Ambassador Sky Chef (1996 Lab. I. C. 299) wherein High Court of Bombay observed that the section gives specifically two fold power to an industrial adjudicator : firstly, it is a virtual power of appeal against the findings of act made by the Enquiry Officer in his report with regard to the adequacy of the evidence and conclusion on facts, and secondly, and far more important, it is the power of re-appraisal of quantum of punishment. Now no restriction lies on an industrial adjudicator to interfere with the enquiry only on four grounds, referred above. However, wide discretionary powers with the adjudicator are to be

exercised in judicial and judicious manner before it interferes with the order of mis-conduct or punishment.

17. With this prelude, now I would turn to facts of the present controversy. As emerged out of the order dated 16-9-2011, the Tribunal had considered the factum of service of charge-sheet on the claimant, calling upon him to submit his statement of defence. It was also taken note of that the Charge-sheet was specific and un-ambiguous, Enquiry Officer called upon the claimant to putforth his case, but in vain. Opportunities were accorded to the claimant to defend himself in the enquiry. Therefore, it is evident that the issues relating to bonafides of the bank and according opportunity of being heard were addressed to and found against the claimant. Issue relating to perversity of report of the Enquiry Officer was also answered against the claimant. Thus it is evident that all issues, except issue relating to proportionality of punishment, were adjudicated against the claimant.

18. As record projects, charge-sheet dated 20-1-1996 was served, contents of which are mentioned herein under :—

"You have been working as peon at New Delhi-Bhikaji Cama Place Branch of the Bank since 10-12-1987. It is reported against you as follows :

That you remained absent from duties unauthorisedly from 17-10-1994 to 30-11-1995 without submitting any leave application. That in this regard, you forwarded a letter dated 26-10-1994 to the Chief Manager of the Branch stating that your wife is serious and as such sought leave of 12 days. That in the circumstances, on 2-11-1994, the Chief Manager, Bhikaji Cama Place, Delhi Branch sent a telegram followed by telegram confirmatory letter to your residential address available on record advising you to report for duty immediately besides informing you that your absence was unauthorized. That in response to aforesaid letter of the Chief Manager, you forwarded a letter dated 28-11-1994 stating therein that you were facing a lot of problems and were not in a position to perform your duties and requested for extension of leave without specifying the nature of problems faced by you and also the number of days of extension of leave sought. That in response thereto, the Chief Manager of the Branch vide his letter 10-12-1994 informed you that on the reasons given by you the leave is not acceptable to the Bank and advised you to report for duty at the Branch immediately. That further, you were informed to appear before the Bank Doctor (Mrs) Dr. S. Grover at 6/12, Rajinder Nagar, New Delhi, in case you were sick. That thereafter, you forwarded 3 letters dated 13-6-1995, 7-8-1995 and 7-10-1995 to the Chief Manager of the Bank at Head Office, Mangalore falsely stating therein that you had gone to the Branch several times for joining duty but the Chief Manager of the Branch did not allow you to report for duty thereat. That as you continued to remain absent, the Chief Manager of the Branch by telegrams followed by confirmatory letters dated 16-11-1995 and 25-11-1995 advised you to report for duty at the Branch and also directed you to appear before the Bank's Doctor in case you were sick. That despite the above, you failed to report for duty or to appear before the Bank's Doctor as directed. That subsequently, you reported for duty at the Branch on 30-11-1995.

That even on 30-11-1995, contrary to the leave rules applicable to you, you failed to submit the leave application or to submit explanation in the matter of your absence during the aforesaid period to the Chief Manager of the Branch.

It is further reported that you have been remaining absent unauthorisedly since 1-12-1995 without giving any intimation to your superiors. That the Chief Manager of the Branch sent 2 telegrams on 4-12-1995 (wrongly typed as 4-12-1994) and 20-12-1995 followed by telegram confirmatory letters to you informing you that your absence is unauthorized and advising you to report for duty at the branch. That despite the above instructions by the Chief Manager you failed to report for duty till date and continue to remain absent. That you sent letters to the then Asst. General Manager, Regional Office, Delhi and Chief Manager, of the Bank at Head Office, Mangalore, misrepresenting that the Chief Manager of the branch is not allowing you to report for duty.

That you have been engaging in business/trade without obtaining permission, in contravention of the provisions of Bipartite Settlement applicable to you. That you are holding the position of the Director of M/s Heaven Exports (India) Division Inc. having office at N-3, Mohan Garden, Uttam Nagar, New Delhi. That you are also carrying on business in the name and style "Ashu Properties and Builders, Tour and Travels" at the aforesaid address.

The aforesaid acts of commission and omission on your part, if proved, would tantamount to :

1. Engaging in trade or business outside the scope of your duties without the written permission of the Bank.
2. Remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days.
3. Willful insubordination or disobedience of lawful and reasonable orders of the management or of a superior, and

4. Doing acts prejudicial to the interest of the Bank;

Gross misconducts under clauses 19.5 (a), 19.5 (p), 19.5 (e) and 19.5 (j) respectively of the Bipartite Settlement applicable to you".

19. The Enquiry Officer recorded findings against the claimant, which are detailed as follows :

"From the above, it is apparent that the CSO remained absent without any reasonable cause. Even if he had some grievance, he could have voiced the same even after joining the duties. In view of the above I hold that the CSO remained absent from 17-10-94 to 29-11-1995 and from 1-12-1995 to till the end of December 1995 as apparent from Ex. M-20"

"Hence I hold that it is the CSO who is named in Ex. M-24 as Director of M/s Heaven Exports (India) Division Inc. having office at M-3, Mohan Gardens, Uttam Nagar, New Delhi and is also carrying on business under the name and style of M/s Ashu Properties and Builders, Tours & Travels at the aforesaid address."

20. After insertion of Section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two fold powers to the Industural Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

21. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Trivunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact or delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995 (1) LLJ 960].

22. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announces the Apex Court in Burn & Company, [1959 (1) L.L.J. 450].

23. In Indian Iron and Steel Company Ltd. [1958 (1) L.L.J. 260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days; as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not

maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in Burn & Company Ltd. (supra) and ruled thus :

> "It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colorable or malafide exercise of power under the relevant standing order, that however, is not the case here."

24. Defence open to an employee, against charge of absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. In Tata Engineering and Locomotive Company Ltd., [1990 (1) LLJ 403] the Patna High Court was addressed to a proposition where workman absented himself without leave or permission for a considerable period. After about 20 days of his absence, a memo and charge sheet was issued, notifying that a domestic enquiry would be held in the matter. The workman failed to appear in a domestic enquiry and the Enquiry Officer conducted the proceedings exparte. On consideration of the report of the Enquiry Officer, the Disciplinary Authority discharged him from service. Later on workman informed the management that he was arrested by the police in connection with a murder case and requested to allow him to join duty. On refusal, an industrial dispute was raised. A High Court placed reliance on the precedent in Indian Iron & Steel Company (supra) and Burn & Company (supra) and ruled that the discharge of the workman was valid and justified for continuous absence without permission or leave.

25. Absence without leave constitutes a misconduct justifying disciplinary action against the delinquent workman. Punishment can only be imposed either by complying with the procedure prescribed by the standing orders of the establishment, if any, or the rules of natural justice. Normally punishment should be inflicted after the workman has been found guilty of the misconduct, after holding a domestic enquiry. Reference can be made to Mufatlal Narain Dass Barot [1966 (1) LLJ 437] and Kalika Prasad Srivastava (1987 Lab. I.C. 307). Quantum of punishment in case of misconduct for absence from duty without leave would depend upon the facts of each case. In order to justify the extreme penalty of discharge or dismissal, it is to be proved that the workman remained absent without leave for an inordinate long period. In Bokaro Steel Plant, Steel Authority of India Ltd. (2007 L.L.R. 238) removal of workman from service who remained unauthorisedly absent for a period of three months was held to be justified. In Sushil Kumar (2007 L.L.R. 45) it was ruled that absence, which is continuous for a long period, amounts to serious misconduct to justify dismissal from service. In Borman (2003 L.L.R. 364) 62 days absence of workman was held to be justified for his dismissal from service.

26. Here in the case the claimant absented from his duties for a long period, without any intimation. It was not for the first time. In past too, he absented himself and was cautioned for his absence, vide letter dated 1-1-91. He again absented and was punished by way of stoppage of his future increments, vide order dated 14-3-95. He again absented for more than 90 days and a notice under clause 17 of 5th Bipartite Settlement was served upon him. The claimant did not mend his ways. He again absented on 17-10-94 till 20-1-96 except for one day when he joined his duties on 30-11-95. Thus it is clear that he is habitual in absenting himself from his duties for inordinate long periods. These facts justify action of the bank in award of punishment of discharge from service to the claimant. Therefore, one cannot atribute illegality or unjustifiability to the action of the bank.

27. An employer would expect loyalty towards him from his employee. In other words, the employee is expected to promote interest of his employer in connection with the job for which he has been engaged. Contract of an employment engrafts a stipulation that the employee should serve his master with good faith and fidelity. When

an employee engages himself in business, beyond the scope of his employment he does acts prejudicial to the interest of his employer. All these facts make it clear that misconduct committed by the claimant were of alasming nature, justifying punishment of discharge from service. The issue is answered in favour of the bank and against the claimant.

Relief :

28. Punishment awarded to the claimant cannot be termed as disproportionate to his misconduct. By no stretch of imagination the punishment can be termed as arbitrary, an act of unfair labour practice an victimization. I conclude that punishment awarded to the claimant is reasonable and justified. He is not entitled to any relief muchless the relief of reinstatement in service with continuity, full back wages and consequential benefits. His claim is discarded. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Govt. for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 10-12-2012

नई दिल्ली, 15 जनवरी, 2013

का. आ. 381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमिया मैगनिसाइट कारपोरेशन (सलेम) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 89/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-43011/37/2012-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Dalmia Magnesite Corporation (Salem) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-43011/37/2012-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2012

Present : A.N. Janardanan,
Presiding Officer

Industrial Dispute No. 89/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Dalmia Magnesite Corporation and their Workman)

BETWEEN

The General Secretary, Magnesite National Labour Union, Vazhapadi K. Ramamurthy Illam, 52, Dr. Subbarayan Road, Salem-636001.	:	1st Party/ Petitioner Union

Versus

The General Manager Dalmia Magnesite Corporation Karupur Post, Salem-636012	:	2nd Party/ Respondent

Appearance :

For the 1st Party/Petitioner Union	:	In Person
For the 2nd Party/Management	:	In person

ORDER

The Central Government, Ministry of Labour & Employment vide its Order No. L-43011/37/2012-IR(M) dated 9-11-2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of M/s. Dalmia Magnesite Corporation, Salem in not arriving at a wage settlement with the representatives of the Trade Union is legal and justified? If not to what relief the Union and its members are entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 89/2012 and issued notices to both sides. Both sides entered appearance in person. It is brought home that the dispute referred to herein is the same as in ID 83/2012 in all respects and is just a recurrence of the same.

3. Now on scrutiny it is understood that the same reference is none other than the reference made to this Tribunal for adjudication as per Ministry's Order No. L-43011/37/2012-IR (M) dated 9-11-2012, already taken on

file as ID 83/2012, due to an apparent error of duplication on the face of the record. Discernibly in all respects the same stands equivalent to the above reference. The concerned parties also made it clear before me that there is no two references made to this Tribunal at the instance of the petitioner. Now it has been comprehended that both the references are one and the same in relation to the same question and between the same parties in relation to which there is no other reference as second in the ordinal numberal.

4. The sole question will be answered in the same earlier reference i.e. ID 83/2012. The present being only a mere repetition of the above reference under the same date, though taken on as ID 89/2012 is therefore only to be struck off from the file of this Tribunal and closed with eventual consignment of the records to the preserving section and it is so ordered.

5. A copy of this order will be transmitted to the Ministry of Labour and Employment for favour of information.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st December, 2012).

A.N. JANARDANAN, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का. आ. 382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लाईटन कन्स्ट्रक्सन इंडिया लिमिटेड (मुम्बई) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई-1 के पंचाट (संदर्भ संख्या 18/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-30011/41/2011-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2012) of the Central Government Industrial Tribunal/Labour Court, Mumbai-1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Leighton Contractors India Pvt. Ltd. (Mumbai) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-30011/41/2011-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Justice G.S. Sarraf,
Presiding Officer

Reference No. CGIT-1/18 of 2012

Parties : Employers in relation to the management of M/s. Leighton Contractors (India) Pvt. Ltd.

Vs.

Their workmen

APPEARANCES :

For the Management : None present.

For the Maharashtra Mazdoor Sena : None present

State : Maharashtra

Mumbai, dated the 16th day of October, 2012

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows :

> "Whether the demand of the Union for the reinstatment of S/Shri Mohan Gopal Kumman, Ratnaker Vishnu Shinde, Sandeep Gyanendra Sharma and Solomon Jesu Anthony in the services of M/s. Leighton Contractors (India) Pvt. Ltd. with back wages, is legal and justified? What relief the workman are entitled to ?"

2. A notice of the reference was issued to the General Secretary, Maharashtra Mazdoor Sena, Anand Ashram, Agyaari Lane, Tembhi Nake, Thane (West)-400061 in pursuance of the order dt. 17-5-2012. On the next date of hearing i.e. 27-6-2012 on one appeared on behalf of the Maharashtra Mazdoor Sena inspite of service of the notice. The reference was then adjourned to 7-8-2012 and then to 21-9-2012 but no one appeared on behalf of the Maharashtra Mazdoor Sena. No one has appeared today also on behalf of the Maharashtra Mazdoor Sena.

3. As regards the first party the notice sent to it has not been served.

4. Maharashtra Mazdoor Sena has not appeared and it has not filed any statement of claim.

5. In the above circumstances the workmen concerned cannot be granted any relief.

6. Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 16 जनवरी, 2013

का. आ. 383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 92/2012) के प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/25/2012-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 16th January, 2013

S.O. 383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 16-1-2013.

[No. L-12011/25/2012-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2012

Present : A.N. Janardanan, Presiding Officer

Industrial Dispute No.92/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workmen)

BETWEEN

The General Secretary, Indian Bank Employees Association (TN), 17, Ammeerjan Street, Choolaimedu, Chennai-94.	:	1st Party/ Petitioner Union

Versus

The Dy. General Manager (Disciplinary Authority) Indian Bank, Circle Office Katpadi Road, Vellore (TN).	:	2nd Party/ Respondent

APPEARANCE:

For the 1st Party/Petitioner Union	:	Petitioner Default to Appear
For the 2nd Party/Management	:	M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/25/2012-IR(B-II) dated 23-11-2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank in imposing the punishment of reduction of Increment by one stage for 2 separate charges resulting in a punishment of reduction of increment by 2 stages upon Sri S. S. Bedford, SR No.14955, Indian Bank, Darapadavedu Branch, is legal and justified? What relief the concerned workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 92/2012 and issued notices to both sides. Respondent appeared through advocate and petitioner did not appear in the dispute in spite of having been served with notice on 5-12-2012 and three adjournments given altogether for his appearance. Needless to say, when the matter stood posted from time to time for further steps and lately on today also for further proceeding, petitioner was absent nor represented.

3. In spite of service of notice for appearance the petitioner in the dispute did not turn up or let in any evidence in support of his case for answering the reference. When he wishes the Court to be satisfied and made believe that imposing the punishment of reduction of increment by one stage for two separate charges resulting in a punishment of reduction of increment by two stages on him is not legal and justified, if it is so, it is for him to discharge that burden which has not been done. The inevitable conclusion is that the action is only legal and justified.

4. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st December, 2012).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/1st Management : None

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 16 जनवरी, 2013

का. आ. 384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नेवली लैग्नाइट कॉरपोरेशन (नेवली) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 5/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-43012/13/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2009) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Neyveli Lignite CorporationLtd. (Neyveli) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-43012/13/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 20th December, 2012

Present : A.N. Janardanan, Presiding Officer

Industrial Dispute No. 5/2009

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their Workman]

BETWEEN

Sri P. Gurusamy (Deceased) Represented by LRs. 1. Mrs. Vijayalakshmi 2. Latha 3. Kavitha	:	1st Party/ Petitioner

Vide IA 77/2010 dated 3-1-2011

Versus

The Director (Personnel) Neyveli Lignite Corporation Ltd., Neyveli.	:	2nd Party/ Respondent

Appearance :

For the 1st Party/ Petitioner	:	M/s. Prabhu Mukunth, Arun Kumar and Vinoth Kumar, Advocates
For the 2nd Party/ Management	:	M/s. N.A.K. Sarma, N. Nithianandam, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-43012/13/2008-IR(M) dated 23-12-2008 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Neyveli Lignite Corporation Ltd. in terminating the services of Sri P. Gurusamy w.e.f. 7-8-1998 is justified by conducting ex-parte domestic enquiry? What relief Sri P. Gurusamy is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 5/2009 and issued notices to both sides. First party and Second party appeared through their Advocates. First and Second party filed claim or counter statement as the case may be.

3. While the case stood posted for further proceedings from time to time, on 6-9-2010 the petitioner was reported dead and his death certificate was produced. As per order dated 3-1-2011 on IA 77/2010 legal representatives 1 to 3 were impleaded as Legal Heirs (LRs) of the deceased Gurusamy. Thereafter amended Claim Statement was filed on behalf of the LRs of the deceased petitioner and additional counter was filed on behalf of the Respondent.

4. The averments in the Amended Claim Statement briefly read as follows :

Petitioners 2 to 4 are the LRs of the deceased First Party (Petitioner). The First Party had joined as an Unskilled Casual Labour under the Respondent whereafter he was regularized. He worked in Fertilizer Plant and in Township Department. Unfortunately he was not able to attend duty from 7-1-1998 to 16-7-1998 and 7-8-1998 to 6-11-1998 because of his wife being seriously affected with various ailments. After treatment at the hospital in Neyveli she was shifted to native village Uttamapalayam. Petitioner had sent leave letter to the concerned department. Petitioner came to understand that he was charged by the Second Party assuming unauthorized absence. The Charge Memos allegedly sent on 5-6-1998 and 6-1-1998 to the residential quarters at Neyveli and native place were found returned as undelivered. Without serving the notice, ex-parte enquiry was held giving no reasonable opportunity to the petitioner and giving a verdict as to guilty unilaterally violating natural justice. Disciplinary Authority accepting the finding awarded punishment of dismissal from service of the petitioner w.e.f. 7-8-1998. The First Party had not been given report of enquiry, which if had been received he would have preferred appeal. While attending on his sick wife at his native place, he also fell ill. He returned to Neyveli and got admitted in NLC General Hospital on 9-11-1999 for further treatment under impression as if he was in service. Then he was referred to Ramachandra Hospital, Chennai. When he approached the department for duty he was not allowed but was informed that his name was removed from the roll of the Corporation w.e.f. 7-8-1998. His immediate representation to the Chief Manager did not bear any fruit. The Second Party was insisting on repayment of the medical bill in the NLC Hospital. If he had been informed about his removal from service he would not have taken treatment in the Ramachandra Hospital. Petitioner is blamed by them for having misused the medical identity. But he never misused the medical book. Without giving reasonable opportunity to defend or to prefer appeal the action is unilateral and against the principles of natural justice. It is prayed that the ex-parte removal be set aside, settle all the benefits, allowances and full back wages entitled to the First Party and to fix the family pension.

5. The averments in the Counter Statement briefly read as follows :

There is unexplained delay in raising the dispute. While the First Party was working as Senior Technician, Grade-II, Water Supply and Drainage Division of Township Administration he was a habitual absentee during various spells commencing from 1992 to 1997 numbering to 6. He was also unauthorizedly absent from 7-1-1998. Communication by registered post dated 11-5-1998 and the Charge Memo dated 5-6-1998 sent to his last known address and in the permanent address were returned undelivered with remarks "Out of Station and Left Without Leaving Address". He reported for duty on 17-7-1998 with a letter stating to have been sick with medical certificate. He was allowed to join duty pending enquiry of the disciplinary proceedings already commenced. He again did not report for duty from 7-8-1998. First Party was sending various leave letters by *courier* from 7-8-1998 to 10-10-1998 without basis. Leave was not sactioned. A telegram was sent to Madurai directing to join duty by 5-11-1998 and communication dated 6-11-1998 was also issued for his reporting for duty before 12-11-1998. Both were returned as above. Charge Memo dated 6-11-1998 was issued by registered post all of which were again returned undelivered. Enquiry Officer was appointed and communication dated 23-11-1998 thereof was also sent to the petitioner but with the same result. The Enquiry Officer also sent communications to the First Party on five occasions and final notice on 21-1-1999 for the enquiry on various dates. But the registered communications were returned undelivered as above. Sufficient and reasonable time was granted to First Party but he did not appear or participate in the enquiry. He knowingly did not participate in the enquiry. Hence the enquiry was proceeded ex-parte marking Ex. 1 to Ex. 24. The Enquiry Officer returned a verdict of the First Party being guilty. The provisional Show Cause Notice with enquiry report was also not received by the First Party, being returned undelivered. On 20-3-1999 the punishment of dismissal from service was imposed and thereafter his *name* was removed from the rolls on 14-5-1999. First Party did not prefer any appeal. The present dispute after 10 years suffers from delay and latches. The Second Party came to know that the First Party misused the Medical Identity Book which should have been surrendered on his dismissal. First Party is liable to pay Rs. 23,050 towards his medical treatment after his dismissal from service. The efforts of the Second Party to settle his terminal benefits by issuing communications sent to him did not materialize as above. First Party is liable to pay the following dues to the Second Party :

1. Quarters (Rent etc.)	Rs. 1,28,413.78
2. Hospital Recovery	Rs. 23,050.00

3. Adjustable Advance	Rs. 2,800.00
4. Festival Advance Balance	Rs. 1,000.00
5. Scooter Advance Balance	Rs. 258.75
Total	Rs. 1,55,522.53

For recovery of the amounts under the Payment of Gratuity Act, communications sent to him were also in vain being returned unserved. Then order of recovery dated 23-2-2006 of Rs. 1,55,522.23 from the terminal benefits of the First Party was passed and published in Tamil Daily Newspaper with advice to receive the balance due to him by way of terminal benefits, which was not responded. Second Party also sent a cheque for Rs. 39,618 dated 13-6-2006, which was returned after having been received by him vide letter dated 17-6-2006 stating conciliation proceedings are on. It is clear that he did not participate in the enquiry deliberately. If there were genuine reasons for his absence, he could have applied for leave in a manner known to law. The past record of the First Party is with various warnings for similar misconducts. No leave was sanctioned after 7-1-1998. Punishment is fair and reasonable. The claim is to be dismissed.

6. Additional Counter Statement averments briefly read as follows :

Dispute by the LRs is not maintainable, who have no locus standi to challenge. The misconduct is related to his service under the Corporation to which the LRs are neither a party nor they have any direct knowledge. It is denied that the 3rd and 4th claimants are LRs of Deceased First Party. In the Service Book of Gurusamy, the name of 2nd claimant alone viz. Vijayalakshmi as wife is there.

7. **Points for consideration are :**

(i) Whether the termination from services of the Petitioner P. Gurusamy (since deceased) w.e.f. 7-8-1998 is justified by conducting ex-parte enquiry ?

(ii) To what relief the legal Heirs or any of them are entitled ?

8. Evidence consists of the testimony of WW1 and Ex. W1 to Ex. W6 (of which Ex. W1 to Ex. W5 are subject to objection of the Respondent that they are not related to Respondent) on the petitioner's side and the testimony of MW1 and Ex. M1 to Ex. M 38 on the Respondent's side.

Points (i) and (ii)

9. Heard both sides. Perused the records, documents, evidence and written arguments on either side. Both sides keenly argued in terms of their respective contentions in the pleadings. The prominent arguments on behalf of the petitioner are that the punishment is malafide after holding an ex-parte enquiry and that delay for raising the dispute is the illness of the petitioner/ workman being the same for his absence in enquiry resulting in the enquiry being held exparte. Though there were two Charge Memos, Ex. M4 and Ex. M10, the enquiry findings do not find mention in it anything regarding the first charge memo whereas the enquiry is seen to be done for both the charges, which is without authority. Enquiry is on the basis of the two Charge Memos based on different sets of charges in each. There is nothing to show the clubbing of the two charges or the petitioner being put on notice of both. Where a paper publication was effected in the matter of collection/forfeiture of petitioner's gratuity why that course was not resorted to before the ex-parte enquiry? He being a sick person and on account of he being not able to communicate holding ex-parte is unjust and violative of principles of natural justice. The petitioner is not liable to be punished without any specific charge and enquiry thereof. Charges framed are not proper. There is violation of Regulation-C of Rule-47 of Standing Orders. Petitioner did not know the charge he has had to meet. Dismissal of petitioner from service is not warranted in an ex-parte order of termination. The workman not being alive, the order is to be set aside and the benefits due to him are to be paid to his legal heirs.

10. Contra arguments on behalf of the Respondent are that in both the charges misconduct being the same, common enquiry was held, which is not improper and not causing any prejudice to the petitioner. There is no reason or explanation for the delayed raising of the dispute. Hence for delay and latches the ID is to be dismissed which is after 10 years. Petitioner cannot be said to have been not aware of the enquiry proceedings in which he did not participate, which is deliberate. He could have applied for leave in a manner known to law. Punishment is proportionate. The disciplinary proceedings being for misconduct against the petitioner to which his LRs are not parties having direct knowledge, they cannot maintain the dispute. The addresses of communications sent to the petitioner before and after the enquiry are correct. Ex.M4 and Ex. M10-Charge Memos were received by the petitioner on 17-7-1998. Petitioner was aware of the enquiry proceedings. He deliberately abstained from participating in the enquiry. He cannot allege the enquiry as not proper. There was no necessity of effecting publication as regards holding of enquiry. There is no violation of principles of natural justice. He did not respond to the Provisional Show Cause Notice before punishment. While he admitted his wife to have had been ill in 1998, it is evident that his absence from 7-1-1998 is unauthorized and deliberate. There is no evidence of having applied for leave or for sanction thereof. His reasons for the absence are not bonafide. Medical Certificate enclosed with Ex. M6 are not by

themselves reliable which is without discharge summary. The punishment is proportionate and reasonable.

11. On a consideration of the rival contentions with reference to the materials on records, I am led to the conclusion that the holding of the enquiry by the Respondent Management ex-parte is not bad in law or is not vitiated, for that reason simplicitor. There is nothing wrong with the common enquiry for the two charges because of the misconduct being on the same fact of absenteeism. The argument that the petitioner had been aware of the holding of the enquiry as claimed by the Respondent is not without some substance. Obviously he did not participate in the enquiry. True, the petitioner has not had applied for leave in a manner known to law. When the communications before and after the enquiry sent to the petitioner have been in correct addresses, he cannot be held to have been not aware of the coming notices that too even after intimations given in some cases. When that is so, the enquiry held cannot be said to be bad in law though it is ex-parte in nature holding him to be guilty of the misconduct. In the context of due construction of the notices as having been served on the petitioner which could duly be made in the circumstances as recourse to publication of notice in the newspaper is not necessitated to be complied with by the Respondent. Though it is claimed that petitioner has applied for leave, there is no evidence therefor or for sanction thereof. The medial certificate produced with Ex. M6 does not furnish itself to be reliable pieces of medical record which is again without discharge summary. The question here is not whether there has been adequate evidence but there has been some legal evidence to draw the conclusion by the Management (State Bank of Bikaner and Jaipur Vs. Nemichand Nalwya-Jt-2011(4)-SC-14). In the circumstances the holding of the enquiry cannot be faulted. Therefore it is only to be held that the enquiry held is fair and proper. Finding is also proper. They are therefore, upheld.

12. Now coming to the punishment, the question is whether the same is proportionate to the gravity of the misconduct. True, the petitioner could have applied for leave in a manner known to law. Plausible explanation is not forthcoming why he has not done so.

13. Was petitioner himself really not in a conducive circumstance to do anything positively so as to comply his duties towards the Respondent Management at all by reason of his wife or he himself being sick is not established by him. If that be the reason the petitioner is not to be found to be blameworthy of having kept silent by not reporting to duty. It is well to remember that no illness comes giving prior notice. It is worthy to note that on 17-7-1998 he reported for duty but he was again falling into his unauthorized absenteeism by not reporting duty. Was it due to any disadvantageous position in which he was put all on a sudden or thereafter, we are at dark. It was from the petitioner alone that a plausible explanation should have come, but which is not forthcoming. That the same did not proceed from him is not invariably to be read against him, especially when it has not been possible for him to give evidence before this forum by reason of his death. On an overall assessment of the entire facts and circumstances, therefore, I feel not to be hesitant to hold that the punishment meted out on him by way of dismissal thereby putting him on economic death is too harsh a punishment which requires interference and aid of Section-11A of the ID Act. Even if due to any infirmity in body or mind the workman has become incapable of joining duty, though that is nobody's case herein, if by the act of the employee management has lost confidence in him of his rejoining duty and continuing to work, and therefore he has to be terminated from service, the same object could well be achieved by making him compulsorily retire so that his succor to life may not be deprived to him. The misconduct of unauthorizedly absenting being not deliberate as comprehensible from the normal conduct of human beings it is just to presume that his unauthorized absence was due to some compelling and inevitable reasons. In such a case even if he has to be terminated from service the same could be by way of Compulsory Retirement and not by way of a dismissal by which he is deprived of his superannuation benefits as well as put on economic death. Hence the dismissal of the workman from service is set aside and he is ordered to be given a Compulsory Retirement with all benefits including pension, arrears thereof, gratuity and family pension with arrears payable to his surviving wife. Since the petitioner is now dead the amounts except family pension will be payable to the Legal Heirs now on record in equal shares. The family pension payable will be paid to his wife. Ordered accordingly.

14. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th December, 2012).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner	: WW1, Mrs. P. Vijayalakshmi
For the 2nd Party/ Management	: MW1, Mr. Y. Joe Stephen Dominic

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
Ex. W1	26-8-2010	Death Certificate.
Ex.W2	26-10-2010	Legal Heir Certificate.
Ex. W3	22-11-1999	Report from Sri Ramachandra Hospital.
Ex. W4	17-1-2000	Representation by the 1st Party to the 2nd Party.
Ex. W5	31-1-2003	Representation by the 1st Party to the 2nd Party.
Ex. W6	—	NLC Standing Orders for workman.

On the Management's side

Ex. No.	Date	Description
Ex. M1	3-4-1998	Memo issued to the 1st Party for unauthorized absent.
Ex. M2	11-5-1998	Memo issued to the 1st Party for unauthorized absent.
Ex. M3	—	Copy of returned covers.
Ex. M4	5-6-1998	Charge Memo issued to the 1st Party Copy of returned covers.
Ex. M5	—	Copy of returned covers.
Ex. M6	17-7-1998	Letter of 1st Party alongwith Medical Certificate.
Ex. M7	5-8-1998	Proceedings of 2nd Party appointing an Enquiry Officer.
Ex. M8	6-11-1998	Proceedings of the 2nd Party. Copy of returned covers.
Ex. M9	—	Copy of returned covers.
Ex. M10	6-11-1998	Second Charge Memo issued to 1st Party.
Ex. M11	—	Copy of returned cover.
Ex. M12	23-11-1998	Proceedings of the 2nd Party for holdings domestic enquiry.
Ex. M13	23-11-1998	Proceedings of the Enquiry Officer to the 1st Party.
Ex. M14	—	Copy of returned covers.
Ex. M15	1-12-1998	Memo of Enquiry Officer to the 1st Party.
Ex. M16	—	Copy of returned covers.
Ex. M17	15-12-1998	Proceedings of Enquiry Officer to 1st Party.
Ex. M18	—	Copy of returned covers.
Ex. M19	28-12-1998	Telegram issued by 1st party.
Ex. M20	28-12-1998	Proceedings of the Enquiry Officer to 1st Party.
Ex. M21	—	Copy of returned cover.
Ex. M22	8-1-1999	Telegram by 1st Party.
Ex. M23	21-1-1999	Final notice issued by the Enquiry Officer to the 1st party.
Ex. M24	—	Returned covers.
Ex. M25	—	Details of unauthorized absent of the 1st Party since 1993.
Ex. M26	3-2-1993	Enquiry Report.
Ex. M27	9-2-1999	Provisional Show Cause Notice issued to the 1st Party.
Ex. M28	—	Copy of returned covers.
Ex. M29	20-3-1999	Final order issued by the Disciplinary Authority.
Ex. M30	—	Copy of returned covers.
Ex. M31	22-4-1999	Proceedings of the 2nd Party to the 1st Party.
Ex. M32	—	Copy of returned covers.
Ex. M33	14-5-1999	Proceedings of the 2nd Party to the 1st Party.
Ex. M34	—	Copy of returned covers.
Ex. M35	28-12-2005	Provisional Show Cause Notice issued by the 2nd Party for settlement due.
Ex. M36	28-2-2006	Notice published in "Dinamani" for forfeiture of gratuity
Ex. M37	13-6-2006	Proceedings of 2nd Party intimating for forfeiture of gratuity alongwith cheque for remaining amount sent to 1st Party.
Ex. M38	17-6-2006	Letter of the 1st Party to 2nd Party.

नई दिल्ली, 16 जनवरी, 2013

का.आ. 385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड, (मुम्बई) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई नं. 2 के पंचाट (संदर्भ संख्या 1/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-30012/33/2006-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2007) of the Central Government Industrial Tribunal/Labour Court, Mumbai-2, now as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation (Mambai) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-30012/33/2006-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/1 of 2007

Employers in relation to the management of Indian Oil Corporation Ltd.

The Dy. General Manager (ER)
Indian Oil Corporation Ltd.
Western Region, 254-C,
Dr. Annie Besant Road,
Prabhadevi,
Mumbai-400 025

AND

Their Workman

Shri Chandrakant B. Karanjkar
Room No. 2, Rane Chawl
Marol Naka, Navpada
Andheri Kurla Road,
Andheri (E),
Mumbai-400 059.

APPEARANCES:

For the Employer : Mr. R. V. Paranjpe, Advocate
For the Workman : Mr. J. H. Sawant, Advocate

Mumbai, the 21st September, 2012

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-30012/33/2006-IR (M), dated 18-12-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Indian Oil Corporation Ltd., Mumbai in not regularizing the services of Sh. Chand akant Karanjkar even though his name appeared in the approved list, is justified ? If not, what relief the workman, Shri Chandrakant Karanjkar is entitled to ?"

2. After receipt of the reference from the Ministry, in response to the notices, both the parties appeared in the reference. The second party workman has filed his statement of claim at Ex-6. According to him, the first party management has employed him w.e.f. September, 1984 as a Cook-cum-bearer in the Guest House of the management situated in Mumbai. He was in continuous employment of the management. They used to pay him wages directly. One Salim Sheikh another workman working as a cook-cum-bearer along with the workman was made permanent by the management in the post of cook-cum-bearer. However they did not make the workman permanent. From December 1985, the management posted the workman in the Sewri Terminal to attend the work in the nature of Khalassi now re-designated as Jr. Operator (Field) along with other permanent workmen. The workman is attending his duty in connection with military Jerry cans, filling of oil barrels of military and private companies, bunking of fuel oil to Naval and private ships, filling of tank wagons and de-canting of wagons, stacking of barrels and catrons of lubricants, connecting and disconnecting flexible hoses from tank truck manifold to the vessels manifold, pulling and pushing the mobile flow meter, assisting the officers for movements of file and record in the office etc. The workman was doing work of permanent nature which is being attended by the permanent workmen. The management instead of making the payment directly to the workman started making payment on the register of M/s. Shroff and Co. perhaps in order to deprive the workman of his lawful rights.

3. In fact the first party is the employer of the workman and he is their direct employee. The first party made 17 other workmen as their permanent workmen. However they have discriminated the second party workman who is working as Jr. Operator (Field) since 5-12-1986. As the first party refused to make him permanent, the workman raised industrial dispute. The conciliation failed, thus as per the report of ALC (C), the reference was sent to this Tribunal. The workman therefore prays that the action of the management in not regularizing his service as permanent Jr. Operator (Field) w.e.f. 5-12-1986 be declared illegal and

unjustified. He also prays that the management be directed to confer upon the workman the status and privileges of permanent workman w.e.f. 5-12-1986 with all consequential benefits.

4. The first party management resisted the statement of claim vide written statement Ex-9. According to them, neither the workman is their employee nor there exist relationship of employer-employee between them. The second party was in the employment of M/s. Shroff and Co. The said company is not party to the reference. Hence reference is hit by principle of misjoinder of parties. The second party has suppressed the material facts from the Tribunal. According to them, they have one of its terminals at Sewri wherein the activities of storing and supply & distribution of petroleum product is carried out by the contractors. The activities therein are of such nature that, they never require to engaging regular manpower. The job is also not available for sufficient duration. The said job is outsourced and carried out by engaging contract labourers by the first party through contractors. The second party was one of such persons who was in the employment of contractors M/s. West Coast Carriers and M/s. Shroff & Co. who were/are carrying out jobs of connecting and disconnecting flexible hoses from T/T manifold to the vessels manifold during the bunkering operation. The tools and other materials were also provided by the contractors. The work was supervised by the contractors and not by the officials of the first party. The second party was in the employment of contractor and performing the job of connecting or disconnecting flexible hoses from T/T manifold to vessels manifold under the supervision and instruction of the officers of the contractor i.e. M/s. Shroff & Co.

5. The first party has regularized the casual labourers employed by them. The second party was not casual labourer employed by the first party Corporation. Therefore he was not entitled to the benefit of permanency. In 1999 the second party had filed writ petition No. 227/1999 before Hon'ble High Court, Bombay wherein prayer was made for regularization. The Hon'ble High Court disposed of the petition with a direction to the central advisory Contract Labour Board to investigate and pass necessary order in the matter. The said Board after investigation rejected the demand of the second party for regularization. In the circumstances no dispute survives. This Tribunal has thus no jurisdiction to entertain the present dispute and to re-examine the same demand of the second party as the issue is already finally determined by the authority concerned. They denied that they have employed the second party form September 1984 at its Guest House. They denied that since December, 1986 he was posted to Sewri Terminal. They denied that he is working as a Jr. Operator (Field) alongwith other permanent workers. They denied the duty list given by the workman. According to them the workman is contract labourer employed by M/s. Shroff & Co. to whom contract was awarded of bunkering of vessels. They denied all the allegations and contended that, as second party is a contract labour of a private contractor, he is not entitled to get the benefit of permanency. Therefore they pray that the reference be dismissed with cost.

6. The second party filed his rejoinder Ex-10. He denied the contents in the written statement that he was in the employment of private contractor and working as employee of M/s. Shroff and Co. According to him the other workers whose services were regularized were also employed through contractor along with the workman. However the first party discriminated the workman. According to him the contents in the written statement are false. He also reiterates the contents in the statement of claim.

7. Following are the issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reason to follow :

Sr. No.	Issues	Findings
1.	Does second party prove that he can claim permanency in the employment of first party ?	...Yes
2.	Does first party prove that second party is a contract employee and he cannot claim permanency ?	...No
3.	Whether decision of first party in not regularizing concerned workman though his name appeared in the approved list, is justified ?	...No
4.	What order ?	As per final order

REASONS

Issues nos. 1 & 2 :

8. In this case it is a fact that the second party workman herein was working with the first party for last number of years. According to the first party, second party was contract labourer and his employer was M/s. Shroff & Co. As against this it is the specific case of the workman that initially the first party had employed him in 1984 in their guest house at Mumbai. According to him first party made Mr. Salim Sheikh as a permanent employee on the post of Cook-cum-bearer at the rest house who was working with him. According to the workman since December 1986 he was transferred to Sewri and was engaged in bunkering operation work. According to the workman in the beginning first party used to pay him directly and afterwards they have shown him as a contract worker of M/s. Shroff & Co. and started paying through Shroff & Co.

9. In this respect Ld. Adv. for the first party submitted that the workman has admitted that he was employee of M/s. Shroff & Co. In this respect the Ld. Adv. For the second party submitted that the second party workman is a poor illiterate person. What he has pleaded in his statement

of claim, rejoinder and in the affidavit is that, the first party had employed him and subsequently first party has shown him as a contract labourer of M/s. Shroff & Co. The first party has produced the copy of pay register at Exh. 28. It is of August, 2009. The first party has also produced the letter of proposal in respect of extending contract of work of M/s. Shoff & Co. from 1-4-2008 to 31-3-2009. Form this letter Exh. 29 it is revealed that Shroff & Co. was working at Sewree since 2006. All the documents must be with the first party and they have not produced any document to show that the workman was working with M/s. Shroff & Co. or with any other contractor at any time prior to 2006. Thus adverse inference can be drawn against the first party. There is also no evidence on record to show that M/s. Shroff & Co. was given any work since 1986 or at any time prior to 2006. The Workman is claiming to be in their service since 1984. His claim appears to be probable and the true that, he was working with the first party at Sewree since December, 1986 continuously. It appears that, they have subsequently shown him as employee of M/s. Shroff & Co. The poor helpless employee had no alternative but to work wherever he was asked to work and to receive the pay from whosoever pay him. This Company is not expected to be working for the first party since 1986 when the workman is working. Thus admission in cross in respect of the present work or the work in the year 2006 on words is not at all helpful to the first party. On the other hand I would like to refer the copy of letter dated 14-7-1986. produced on behalf of the second party at Exh. 35. In this letter the workman is shown listed as casual worker working from 5-12-1985. It supports the case of the workman that he is the employee of the first party and subsequently the first party has shown him as employee of M/s. Shroff & Co. merely to deprive him from getting the benefit of permanency. No doubt to unfair labour practice by the first party.

10. The Ld. Adv. for the first party further submitted that, neither there was vacancy nor the second party was appointed by following the procedure of recruitment. Therefore the second party cannot claim regularisation or status of permanency. In support of his argument Ld. Adv. resorted to Apex Court ruling in MP Housing Board & Anr. V/s. Manoj Srivastava AIR 2006 SC 3499 wherein the Hon'ble Court on the point of status of permanent employee observed that :

> "A person with a view to obtain the status of permanent employee must be appointed in terms of the statutory rules."

11. The Ld. Adv. also resorted to the ruling of Apex Court in Secretary, State of Karnataka & Ors. V/s. Uma Devi and Ors. 2006 (2) LLJ 722 (SC) wherein Hon'ble Court on the point held that, regularising the services of casual or temporary workers who were appointed without following the procedure prescribed there for would amount to back door entry which cannot be allowed. On the point the Hon'ble Court further observed that :

> "State could not invoke its power under Article 162 to regularise appointments made in contraventions to mandatory provisions."

12. The Ld. Adv. for the first party further submitted that the absorption of contract labourers cannot be automatic and court cannot give direction to the effect. In support of the argument he cited the ruling in Municipal Corporation Greater Mumbai V/s. K. V. Shramik Sangh & Ors. AIR 2002 SC 1815 wherein the Hon'ble Court observed that :

> "Absorption of contract labourers cannot be automatic and it is not for the Court to give such direction."

13. The Ld. Adv. further submitted that merel serving for a longer period is not sufficient to make him a permanent employee if he is appointed not on the basis of advertisement or open competition. In support of his argument Ld. Adv. cited Chhatisgarh High Court ruling in Patiram Sahu V/s. State of Chhatisgarh & Ors. 2006 (111) FLR 856 (Chhat. H.C.) The Ld. Adv. further submitted that contract workers or temporary workers cannot be made permanent without recruitment against vacancy and services of such workers cannot be regularised. On the point the Ld. Adv. resorted to Jharkhand High Court ruling in M/s. Bharat Cooking Coal Ltd. Dhanbad V/s. their workmen 2008 (116) FLR 1096 (Jhark. H.C.) In this respect the Ld. Adv. also resorted to Calcutta High Court ruling in Food Corporation of India V/s. CGIT Assansol & Ors. 2009 III CLR 463 (Cal. DB) wherein Hon'ble High Court observed that :

> "No regularisation even in respect of a workman under Industrial Dispute Act is permissible unless the contigency of the law is satisfied namely appointment following the rules; appointment in a post and appointment for a long continuous period in the angle of Uma Devi 3 & Ors. (Supra).

14. As against this the Ld. Adv. for the second party submitted that, various enactments are made for the welfare of labourers and workmen with intention to stop the exploitation poor workers. Inspite of that the exploitation of poor class is going on under the garb of contract labourers or daily wages etc. He pointed out that the workmen are working continuously for number of years. They are doing the work of perennial nature along with permanent employees. The Ld. Adv. further submitted that in the light of globalized welfare of the workmen and various labour welfare legislations recently the Hon'ble Apex Court has given due consideration to the labour welfare and has taken cognizance of the exploitation of the oppressed class, in the recent judgment in Bhilwara Dugdh Udpadak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 wherein, the Hon'ble Apex Court in respect of exploitation in the name of so called contract labourers or daily wagers observed that :

"This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statue employers are every often resorting to subterfuge by trying to show that their employees are infact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/ workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/ workmen of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees"

The Hon'ble Court further observed that :

"This Court cannot countenance such practices anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers".

15. The ratio laid down by Hon'ble Apex Court in this recent ruling, is squarely attracted to the set of facts of the case at hand. On the other hand the above rulings cited on behalf of the first party are not attracted to the set of facts of the present case. It is contended by the workman that he was working with the first party initially as Cook-cum-attendant at the guest house since 1984 and since 1986 he is working at Sewri as Jr. Operator. According to him though he is doing work continuously for number of years, the management refused to make him permanent by showing him as a contract labourer. According to the workman the said contract is sham and bogus and infact he is employee of the first party and the first party has shown him contract worker merely to deprive him from getting the benefit of permanency. It is also the case of the workman that some workmen working with him were made permanent. He has also given the list of those workmen who were regularised in the services of first party as Junior Operators (field). In the above ruling the Hon'ble Apex Court has taken cognisance of such type of exploitation.

16. In this backdrop I hold that the labour contract of M/s. Shroff & Co. in sham and bogus and mere camouflage in order to deprive the workman from getting the benefits of permanency. These workmen are working for years together for minimum wages which are not sufficient even to meet the two ends of the family whereas the permanent employees who are doing the same work get much more pay and allowances and other facilities from the department.

17. In the light of the resent view of the Hon'ble Apex Court all the Courts and Tribunals are duty bound to look into the matters carefully and to take appropriate action to stop the exploitation of poor class of the society, who are struggling to meet the two ends of their respective families. In this backdrop I hold that the second party is not a contract worker. On the other hand I hold that he is an employee of the first party and deserves to be regularised from the date of completion of his period of probation of two years. In short, he should be made permanent from December, 1986 with all benefits as like the permanent employee.

Issue No. 3 :

18. In the light of above discussions it is clear that the labour contract of M/s. Shroff & Co. is held to be sham & bogus. The workmen herein is held to be the employee of the first party. Therefore the action of the first party in not regularising his services as permanent worker is not justified. Thus, it needs no further discussion to record me negative findings on this issue No. 3. Accordingly I allow the reference and proceed to pass the following order :

ORDER

(i) The reference is allowed with no order as tc cost.

(ii) The management is directed to regularise the services of the workman as a permanent worker of the first party to the post of Jr. Operator (Field) w.e.f. December, 1986 and to pay the difference in salary and all other allowances and consequently benefits of a permanent employee.

Date : 21-9-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 16 जनवरी, 2013

का. आ. 386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सगमनिया लाईम स्टोन सतना के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 153/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2013 को प्राप्त हुआ था ।

[सं. एल-29012/22/2003-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/ 2003) of the Central Government Industrial Tribunal- cum-Labour Court, Jabalpur now as shown in the Annexure in

the Industrial Dispute between the employers in relation to the management of M/s. Sagmania Lime Stone Mines (Satna) and their workman, which was received by the Central Government on 3-1-2013.

[No. L-29012/22/2003-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/153/2003

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Kamlesh Kumar Mishra,
S/o Shobhnath Mishra,
R/o Batiakhurd, PO Sagmania,
Distt. Satna (MP) ... Workman

Versus

Mines Manager,
Sagmania Line Stone Mines
Satna Cement Works,
PO Birla Vikar,
Distt. Satna (MP) ... Management

AWARD

Passed on this 12th day of December, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-29012/22/2003-IR (M) dated 21-8-2003 has referred the following dispute for adjudication by this tribunal :—

"क्या प्रबंधतंत्र सगमानिहा लाईम स्टोन माईन्स ऑफ सतना सीमेंट वर्कर्स, जिला सतना (म.प्र.) के प्रबंधन द्वारा श्री कमलेश कुमार मिश्रा आत्मज श्री शोभनाथ मिश्रा, भूतपूर्व वायरमेन, इलेक्ट्रिक विभाग को प्रशिक्षु के रूप में 22-11-1994 से 21-11-2000 तक 6 वर्षों तक सेवा में बनाये रखने के पश्चात् उसकी सेवाएं नियमित न की जाकर 22-11-2000 से सेवा पृथक करने की कार्यवाही न्यायोचित है ? यदि नहीं, तो संबंधित कर्मकार किस अनुतोष के हकदार है ?"

2. The case of the workman is short is that the alleged workman Shri Kamlesh Kumar Mishra was engaged as Apprentice in the Trade of wireman from 19-1-89 to 18-4-90 by the management Sagmania Lime Stone Mines, Satna Cements, Satna. Therefore he was appointed as wireman by the management from 21-11-94 and worked continuously till 22-11-2000 when he was disengaged from employment. His service was satisfactory and was appreciated by the management. He was served with a chargesheet dated 20-11-2000. He gave reply on 24-11-2000 and denied the charges. The management concluded the departmental enquiry without giving opportunity to defend himself. The order of appointing of enquiry officer and presenting officer was not supplied to him. The enquiry proceeding was conducted at the back of the workman keeping him in dark. The departmental enquiry is alleged to have been conducted against the principle of natural justice. It is submitted that the action of the management in dismissing him from services is illegal and is fit to be set aside. The workman be reinstated with all consequential benefits.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that admittedly the alleged workman was engaged as Apprentice in the trade of wireman from 19-1-89 to 18-4-90. It is denied that on 21-11-94 he was appointed as wireman by the management rather he was engaged as Apprentice. His apprenticeship was extended vide orders dated 20-11-96, 18-11-97, 20-11-98 and 18-11-99 on compassionate humanitarian ground. On the expiry of the period of his apprenticeship, the contract of apprenticeship was not renewed and it expired on 22-11-2000. It is stated that the alleged workman was found negligent and careless in carrying out electric meter reading in the employees quarters of the establishment. Admittedly he was chargesheeted and inquiry was held against him but no action was taken on the basis of inquiry report. The job of meter reading was part of the apprenticeship on job training. It is stated that it is not obligatory on the part of the employer to offer employment to the apprentice. It is submitted that on these grounds, the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication :—

I. Whether the action of the management to keep the workman Shri Kamlesh Kumar Mishra as apprentice from 22-11-94 to 21-11-2000 for six years thereafter to remove him without regularizing in service is justified ?

II. To what relief the workman is entitled ?

Issue No. I :

5. According to the workman he was appointed by the management as wireman on 21-11-94 and worked continuously till 21-11-2000 when he was terminated without any proper departmental enquiry. On the other hand, the management has contended that the alleged workman was engaged as Apprentice on 21-11-94 and his apprenticeship was extended time to time on compassionate humanitrian ground till 20-11-2000 and thereafter it was not renewed. It is stated that no action was taken on the basis of Inquiry report against the workman and the factum of enquiry has no relevancy qua discontinuance of workman's apprenticeship.

6. It is an admitted fact that the workman was engaged as Apprentice in the trade of wireman from 19-1-89 to 18-4-90 by the management. Now the question is as to whether from 21-11-94 he was again engaged as Apprentice

or he was appointed as wireman by the management. The workman has adduced oral and documentary evidence in the case. The workman Shri Kamlesh Prasad Mishra has supported his case in examination-in-chief. He has stated that he was appointed by the management w.e.f. 21-11-94 and worked continuously till 22-11-2000. He has stated at para 24 that on the basis of letter dated 18-11-94 he was engaged apprentice for two years. He has identified his signature on the said letter which is marked as Exhibit M/1. This shows that he was engaged as Apprentice from 21-11-94 rather as a wireman by the management. This further shows that the workman has not come before the Tribunal with a fair case. He has denied that the letters dated 20-11-96, 18-11-97, 20-11-98 and 18-11-99 were received by him. The said letters are said to be extension of apprenticeship of the workman.

7. The workman has adduced documentary evidence which are admitted by the management. Exhibit W/1 is the marksheet of Wireman Training Examination. This is filed to show that he was duly qualified for wireman. Exhibit W/2 is the Wireman Certificate of the workman in the trade of industry issued on 29-9-98. Exhibit W/3 is also wireman certificate in other trades issued on 26-9-97. These certificates simply show that he was fit to be wireman. Exhibit W/4 is the certificate issued by the Personnel Manger, Satna Cement Works. This certificate shows that the workman was engaged as Apprentice by the management from 19-4-89 to 18-4-90. It is an admitted fact that he was apprentice on the said period. Exhibit W/5 is another certificate dated 17-4-1998 issued by the Mines Manager, Sagmania Lime Stone Mines. This certificate clearly shows that form 22-11-94 till date of issuance of the certificate, the workman was continuing as Apprentice Wireman. This certificate corroborates the case of the management that he was Apprentice there and was not working as wireman as has been alleged by the workman. Exhibit W/6 is the chargesheet dated 20-11-2000 issued against the workman. It is submitted by the learned counsel for the workman that he was appointed as wireman by the management, as such he was chargesheeted. The said chargesheet shows that the workman is indicated as an Apprentice. This is clear that he was not appointed as a wireman by the management. There is a specific case of the management that no action was taken on the basis of chargesheet and enquiry. This shows that he was all along Apprentice and was never appointed as wireman on regular basis. Exhibit W/7 is the reply of the workman denied the charges. This also shows that the workman had written his designation himself as Apprentice. Thus the documentary evidence also corroborates the fact that the workman was never appointed as wireman by the Manager rather he was working as Apprentice.

8. On the other hand, the management has also adduced oral and documentary evidence in the case. The management witness Shri L. P. Chaturvedi has come to support the case of the management in examination-in-chief but in cross-examination, he has stated at para 8 that the lawyer had prepared the affidavit and he had simply written his address and signed over it. This clearly shows that in examination-in-chief, the statement written by way of affidavit is not his statement. This shows that wrongly he had done affidavit considering the same as his statement. His evidence is not reliable. Exhibit M/1 is the engagement letter dated 18-11-94 whereby the workman was engaged from 22-11-94 as Apprentice. Thus the documentary evidence also substantiate that the workman was engaged as Apprentice and not as wireman by the management. There is no evidence on the record to show that the workman was ever appointed as wireman by the management till 22-11-2000.

9. From the above evidence, it is proved that the workman was never appointed as wireman by the management. It is established that he was engaged as Apprentice on 22-11-1994 and continued in the same capacity till 22-11-2000. The learned counsel for the workman has referred Section 4 of the Apprentice Act, 1961 which runs as follows :—

"Section 4 Contract of Apprenticeship :.

(1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract.

The Rule 7(1) of the Apprenticeship Rules 1992 is reproduced below :—

"Rule 7(1)—The period of apprenticeship training in the case of trade of apprentices referred to in clause (b) of Section 6 of the Act shall be as specified in Schedule-I.

Schedule-I

Group No. 4–Electical Trades Group :

3.	Wire-man	855.10	1:7	3 year	wire-man	2 years	8th class passed from a recognised school or equivalent.

It is submitted that this shows that the period of apprenticeship is only for two years but admittedly the workman had worked from 22-11-94 to 22-11-2000 for six years. The learned counsel for the workman has also referred the Standing Orders regulating conditions of service of

Sagmania Lime stone Mines. Articles 2 deals with classification of Employees. Article 2 clause IV deals with apprentice which is as follows :

> "Apprenticeship means a Learner, provided that no employee shall be classified as apprentice if he has had training for an aggregate period of service which may be prescribed in each case by the employer; provided further that the maximum period of training shall ordinarily by 3 years but for any kind of job requiring highly/specialized skill, the period may be even more but the aggregate period of training shall not exceed 4 years. After the training is over, it shall not be obligatory on the part of the employer to give employment to the apprentice on or after the completion of the period of his apprenticeship."

It is urged that in no case the period of Apprenticeship it to be exceeded beyond 4 years. In this case, he had worked for 6 years. This itself that he became wireman after expiry of the maximum period of Apprenticeship. It is submitted that the workman was terminated after holding proper enquiry and the action of the management in removing the workman is not justified.

10. The learned counsel for the management has referred Section 22(1) of the Apprentice Act, 1961 which runs as follows :

> "Section 22 – Offer and acceptance of employment :
>
> (1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer."

It is submitted that it is not obligatory on the management to offer any employment. The evidence (Exhibit M/1) clearly shows that the employment of wireman was never offered by the management to the workman while engaging him as an apprentice rather he always worked as an apprentice and the period of apprenticeship was extended on his request time to time. On expiry of the period of apprenticeship, his period was not renewed. It is clear that he was not appoinetd as a wireman by the management. I further find that simply by exceeding the period of Apprenticeship as per statutory provision, the right of the post of wireman does not accrue to the workman rather it is only violation of the Act. I find that he was only apprentice and he was not entitled to claim the post of wireman after expiry of the contract of apprenticeship as there was no contract in his engagement letter. This issue is decided against the workman and in favour of the management.

11. **Issue No. II :**

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. The reference is accordingly answered.

12. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2013

का. आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम रायपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 53/86) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था ।

[सं. एल-17012/32/85-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/86) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. LIC of India (Raipur) and their workman, which was received by the Central Government on 22-11-2012.

[No. L-17012/32/85-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/53/86

Presiding Officer : Shri Mohd. Shakir Hasan

The General Secretary, ... Workman
Raipur Division Insurance Employees
Union, Pandri, C/o LIC,
Pandri, Raipur.

Versus

The Divisional Manager, ... Management
LIC of India,
Pandri, Raipur

AWARD

Passed on this 5th day of November 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-17012/32/85-D-IV(A) dated 6-6-1986 has referred the following dispute for adjudication by this tribunal :

> "Whether the management of Life Insurance Corporation of India, Raipur is justified in not considering the application dated 7-1-1984 of

Shri C.K.P. Goswami, Sub-Staff withdrawing his letter of resignation dated 6-1-1984? If not, to what relief is the workman concerned entitled ?"

2. The case of the Union/Workman, in short, is that the workman Shri C.K.P. Goswami was appointed as Sub Staff on 3-1-1967 in the Life Insurance Corporation of India at Raipur and was posted at Carrier Agents Branch, Raipur. He applied for loan from the management but the permission for grant of loan was rejected by the Branch Manager of Carrier Agent, Raipur on the ground of non-availability of the docket. He was an active Trade Union worker and his activity in the Union was the root cause for such conspiracy against him. He was in mental tension for want of money for his treatment. He requested to the Branch Manager for loan but he threatened and ordered him either not to come to the office or resign from the service. In such a state of mind, he filed an application at 3.30 PM to the Branch Manager about his resignation and submitted to accept his resignation and to pay his loan policy, provident fund etc. immediately. The Branch Manager for taking revenge went to the Divisional office personally and met the Divisional Manager. When he returned home, he felt that due to mental tension, he had submitted his resignation letter by mistake. On 7-1-1984 at about 9.30 AM, he approached the Branch Manager and requested him that he wanted to withdraw his resignation letter dated 6-1-1984 but the Branch Manager refused and directed to meet the Divisional Manager. He immediately met the Divisional Manager and submitted an application on 7-1-1984 and requested him to permit him to withdraw the resignation letter and waited there till 2.30 PM. It is stated that when he came on 8-1-1984 on duty, he was informed by the Branch Manager that his resignation was accepted and the letter of acceptance was sent to his residential address by registered letter which was received on 13-1-1984. It is stated that there is malafide intention in accepting to resignation so quickly in violation of Regulation-18 of the LIC staff Regulations 1960. He had completed 18 years of service and therefore the management should have after receiving two months pay in lieu of notice, the resignation could only be accepted. The applicant had to give two months notice but no such notice was given by the workman. It is stated that the acceptance of resignation letter within a period of less than 24 hours clearly shows that the Branch Manager victimized the workman due to his revengeful attitude. It is submitted that the action of the management in not considering the application dated 7-1-1984 is not justified and the management be directed to reinstate him with back wages and with consequential benefits.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that the resignation of the workman was accepted by the Divisional Manager on 7-1-1984 at about 10.45 AM and the same was communicated to the Branch Manager at about 10.15 AM on the same day. The workman was immediatley called to inform the acceptance of his resignation submitted by him on 6-1-1984. He refused to accept the original copy of the acceptance letter and therefore the same was sent to him by registered post and also through UPC. The copy of the letter was also pasted in the notice board. It is denied that any letter was given by the workman on 7-1-1984 to the Branch Manager for withdrawing his resignation application. However he gave his letter, dated 7-1-1984 directly for withdrawing his resignation in the inward section of Divisional Office of the Corporation between 1 and 1.30 PM. Since the resignation was already accepted at about 10.15 AM, the question for allowing the workman to withdraw the same does not arise. It is stated that the workman had applied for loan which was given to him on 11-1-1984 and the corporation did not resort to any unfair labour practice. It is denied that the Branch Manager gave any threat and the workman was in mental tension. He gave letter of resignation after understanding its implications. It is stated that the validity of the acceptance of resignation does not depend upon realization of the salary in lieu of notice period. The Divisional Manager has power either to reduce or waive the demand of the salary in lieu of notice period. The demand of the salary for one month only instead of two months in lieu of notice period is due to inadvertence. The acceptance is legal and not punitive, arbitrary malafide or illegal and resignation letter was considered after full consideration. It is submitted that the claim of the workman is liable to be dismissed with costs.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication :

I. Whether the action of the management in not considering the application dated 7-1-1984 of Shri C.K.P. Goswami, Sub Staff withdrawing his letter of resignation dated 6-1-1984 is justified ?

II. To what relief the workman is entitled ?

5. **Issue No. I**

The pleadings of the parties show that the following facts are admitted by the parties :

1. The workman Shri C.K.P. Goswami was sub staff in LIC, Raipur and was appointed on 3-1-1967. He was posted at Carrier Agents Branch, Raipur.
2. He tendered his resignation letter dated 6-1-1984 to the Branch Manager, Carrier Agent's Branch, Raipur.
3. His resignation letter dated 6-1-1984 was personally taken by the Branch Manager to Divisional Manager, Raipur on the same day.
4. His resignation was accepted by the Divisional Manager, Raipur on the next day i.e. on 7-1-1984 at 10.15 AM and the acceptance letter was

sent to the Branch Manager on the same day at 10.45 AM.

5. The acceptance of resignation letter was sent to the workman by registered post.

6. The workman Shri Goswami gave a letter dated 7-1-1984 directly for withdrawing his prayer of resignation in the inward section of the Divisional Office of the Corporation between 1 and 1.30 PM on the same day.

6. To prove the case, the Union/Workman has examined three witnesses. WW1 Chandra Kamta Goswami is the workman himself. He has supported his case. He has stated that on 6-1-1984 he was in tension and he gave letter at about 3.30 PM that his provident fund and loan should be given and his resignation should be accepted. He has stated in cross-examination that he was got written his resignation letter by force. This fact is not established by his subsequent act as well as by the resignation letter itself. There is nothing to show that he was subsequently raised before the Competent Authority that his letter of resignation was obtained by force or undue influence. The copy of the said resignation letter is also filed by the workman which is marked as Exhibit W/5. The said resignation letter shows that it was written on 3-1-1984 and was submitted on 6-1-1984 to the Branch Manager. This is hand written and the same is accepted by the workman in his evidence. This shows that the resignation letter was not written by any undue influence. His evidence shows that he gave application at about 11 AM on 7-1-1984 for withdrawal of his resignation letter in Inward Section of Divisional Manager. This said withdrawal letter also does not discloses that resignation letter was obtained by force. This shows that his letter for withdrawal of resignation letter was filed after acceptance of resignation by the Divisional Manager. Another witness W.W. 2 Shri Lohitakshan was working as Record Clerk in the Divisional Office of LIC. He has stated that he received the letter of the workman on 7-1-1984 at 11 AM but entered in the receipt register at 11.45 AM. This also shows that the letter of withdrawal was filed after acceptance of the resignation by the Competent Authority. The last witness WW3 Shri Dwarka Prasad Seetha was working as Assistant in the Carrier Agent Branch, Raipur. He has come to support the fact that the relationship of the workman with the Branch Manager was not cordial. He used to ask him number of times to work after office hours. He has stated that he cannot say that memos were issued against the workman for just causes. His evidence not reliable to consider that the relationship was not cordial between them. Thus all the evidence of the Union witnesses show that he wrote the resignation letter three days earlier before submission to the Branch Manager on 6-1-1984 and the resignation was accepted prior to receipt of the application of withdrawal on 7-1-1984. It is also evident that since the resignation letter was written earlier and therefore no force or undue influence was used by the Branch Manager. Moreover the withdrawal letter also does not disclose that the resignation was obtained by force.

7. The Union has filed documentary evidence also in the case. Exhibit W/1 is a letter of show cause dated 5-9-93 whereby he was show caused for committing indiscipline. This shows that he was earlier asked show cause for his behaviour. Exhibit W/1(A) is another letter of show cause dated 20-8-82 whereby he was asked as to why he did not live in dress. These letters show that his conduct in the office was not proper and was not disciplined. Exhibit W/2 is another letter dated 6-1-1984 whereby he was asked explanation. Exhibit W/3 is the letter dated 6-1-1984 whereby the workman was informed that his loan would be sanctioned after loan docket. This shows that the loan application was not rejected as alleged by the workman. Exhibit W/4 is medical certificate. This is filed to show that he was under treatment for anxiety (mental tension) with fever from 2-1-1984 to 6-1-1984. This certificate was obtained by the workman on 27-1-1984 i.e. much after the acceptance of resignation. This shows that it is obtained for the instant case.

8. Exhibit W/5 is a letter dated 3/6-1-1984 of the workman whereby he had tendered his resignation and had requested to accept it immediately. This is an admitted document. It was written by hand. This letter clearly shows that after written in on 3-1-84, the same was submitted on 6-1-1984. This itself shows that it was submitted after understanding its consequences. Exhibit W/6 is the letter dated 7-1-1984 whereby by workman had requested for withdrawal of his resignation letter. This letter is admittedly filed after the acceptance of resignation. Moreover this letter shows that the workman had no raised allegation that the resignation letter was obtained by force. Exhibit W/7 is the registered envelope whereby the letter of acceptance of resignation was sent to the workman. Exhibit W/8 is the letter dated 7-1-1984 of acceptance of resignation whereby the workman was communicated that his resignation was accepted. He was directed to pay one month pay in lieu of notice. Exhibit W/9 dated 9-1-84 is representation given by the wife of the workman. Exhibit W/10 is another copy of same representation dated 9-1-84. Exhibit W/11 is the letter dated 13-2-85 whereby the workman was informed of rejection of his representation for reinstatement in service. Exhibit W/12 is the failure of discussion between the management and the Union before the Asstt. Labour Commissioner (C), Raipur. Exhibit W/13 is carbon copy of letter dated 7-1-1984 of request for withdrawal of resignation letter of the workman. Exhibit W/6 is also same letter. Exhibit W/14 is another representation dated 8-3-84 whereby the workman again requested for reinstatment in service. This letter shows that the workman had admitted that he had filed application for withdrawal of resignation letter after acceptance of

resignation, thus the documentary evidence also shows that the application for tendering his resignation was filed voluntarily and the same was accepted by the Competent Authority. Thereafter the application to withdraw the application of resignation was filed.

9. The management has also adduced three witnesses in the case. The management witness No. 1 Shri Pawan Kumar Sharma was posted as Asstt. Branch Manager (A), Raipur. He has stated that on 6-1-84, Shri Goswami submitted his resignation and told him to accept it. He was not Competent Authority and he forwarded it to the Competent Authority. His evidence shows that the workman tendered his resignation on 6-1-84 and the same was forwarded to the Competent Authority. There is nothing to disbelieve this witness. MW 2 Shri Satish Chandra Joshi was posted as Divisional Manager Raipur in 1984. He has stated that Shri G.B. Singh Administrative Officer presented the resignation letter of Shri Goswami with recommendation of Asstt. Branch Manager, Mr. B.S. Awasthy and Manager (Personnel) Shri Khetrapal. He accepted the resignation after thinking over it on 7-1-1984 at about 10.20 AM. He has stated that Mr. Goswami did not meet him. He has stated that Mr. Goswami had never complained against Shri Awasthy. He did not receive any application of Mr. Goswami before accepting the resignation for withdrawing resignation letter. In cross-examination he has supported the case of the management. He has stated that Shri Goswami had submitted for immediate acceptance and he accepted it on the next morning. The last Management witness No. 3 Shri B.S. Awasthy was Branch Manager of Carrier Agent Branch, Raipur. He has also corroborated other management witness. He has stated that on 6-1-84 at about 3.30 PM when he came in the office, his Asstt. Branch Manager put up the resignation letter of Shri Goswami who had also recommended it for forwarding the same. He has stated that he was going to the Divisional Manager office and as such he gave the said resignation letter to Shri B.G. Singh, Asstt. Administrative Officer. He has supported the fact that on 7-1-84, at about 10.45 AM , he got information about the acceptance of resignation letter. He called Shri Goswami and showed him that the resignation was accepted. He sent the acceptance letter to his residential address. In cross-examination, there is nothing to disbelieve him. His evidence is also corroborated with the documentary evidence. Thus the oral evidence of the management clearly establishes the case that Mr. Goswami gave his resignation letter voluntarily and the same was forwarded to the Competent Authority who accepted the same before receiving any application of Shri Goswami to withdraw the said resignation letter.

10. The management has also adduced documentary evidence in the case. Exhibit M/1 is the resignation letter dated 3/6-1-84 of the workman. This document is also filed by the workman. This shows that the workman had requested for immediate acceptance. Exhibit M/2 is the withdrawal letter dated 7-1-1984. This letter is also filed by the workman and the relevancy has already been discussed earlier. Exhibit M/3 is the receipt of payment of loan advance. This shows that the loan was paid on 11-1-84 after due process. Exhibit M/4 is the forwarding letter dated 6-1-84 whereby the Asstt. Branch Manager Shri Pawan Kumar Sharma forwarded the resignation letter to Divisional Manager for necessary action with recommendation of Branch Manager Shri Awasthy. The said forwarding letter further shows that Administrative Officer put the letter before the Divisional Manager on 6-1-84 with his note to accept the same after waiving the period of notice immediately as a special case as the workman had desired. The forwarding letter further shows that the Divisional Manager accepted the resignation on 7-1-84 with direction to realize one month pay in lieu of notice. These documents clearly show that the resignation was accepted in accordance with the Regulation.

11. The learned counsel for the management submitted that the resignation was accepted and thereafter the application of withdrawal was filed by the workman Shri Goswami. It is submitted that after acceptance of the resignation, the service is said to have been terminated and the withdrawal cannot be accepted. The learned counsel has relied the decision reported in (2003) 5 S.C.C. 455 North Zone Cultural Centre & Another Vrs. Vedpathi Dinesh Kumar wherein the Hon'ble Supreme Court held :

> "Para-15 : In our opinion, both these grounds are unsustainable in law. This Court in Raj Kumar case held-
>
> When a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Undue delay, in intimating to the public servant concerned the action taken on the letter of resignation, may justify an interference that the resignation had not been aceepted."
>
> Para-16-Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in act an acceptance before the withdrawal."

The learned counsel has also placed reliance on the decision reported in 1. AIR 169 SC. 180 (1), Raj Kumar Vrs. Union of India, 2. (2006) 10 S.C.C. 258, Chandmal Chyal Vrs. State of Rajasthan. Thus it is clear that once the resignation is accepted, it cannot be withdrawn and the

question of re-appointment does not arise. This issue is decided against the Union and in favour of the management.

12. **Issue No. II**

On the basis of the discussion made above, I find that there is no merit in the case and the workman is not entitled to any relief. The reference is, accordingly answered.

13. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2013

का. आ. 388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीमेंट कॉर्पोरेशन ऑफ इंडिया लि. दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 55/2011) प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-2012 को प्राप्त हुआ था ।

[सं एल-29011/101/2002-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2011) of the Central Government Industrial Tribunal No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Cement Corporation of India Ltd., Delhi and their workman, which was received by the Central Government on 22-11-2012.

[No. L-29011/101/2002-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 55/2011

The General Secretary,
CCI/DGU Karamchari Sangharsh Union,
A/57, Gali No. 1, Muthapur Ext.,
Badarpur, New Delhi-110044. ... Workman

Versus

The General Manager
Cement Corporation of India Ltd.,
Delhi Grinding Unit,
Okhla Industrial Area Phase-I,
New Delhi-110020. ... Management

AWARD

1. Cement Corporation of India (hereinafter referred to as the Corporation) was incorporated for production and marketing of cement. Cent per cent share holding of the Corporation vests with the Central Government. The Corporation was having ten units, that is, at Bokajan, Rajban, Tandoor, Madhar, Kurkunta, Charkhi Dadri, Adilabad, Akaltara, Naya Gaon and Delhi Grinding Unit. The Corporation was declared as sick company by the Board of Industrial and Financial Re-construction (hereinafter referred to as the Board) vide order dated 8th of August, 96, since there was a liability of about Rs. 1800/- crores on it. Draft Rehabilitation Scheme was formulated by the Board, which was subsequently upheld by the Appellate Authority for Industrial and Financial Reconstruction. Under the scheme seven units viz., at Mandhar, Kurkunta, Charkhi Dadri, Adilabad, Akaltara, Nayagaon and Delhi Grinding Unit were earmarked as unviable, being non-operational since long, after having been in huge losses. It was decided to close these units.

2. Claimants, namely S/Shri Shyamji Dubey, Ram Lakhan, Surya Deo Das, Akshay Kumar and Subh Narayan Singh were engaged at Delhi Grinding Unit of the Corporation as adhoc employees, in case of exigencies. They worked at Delhi Grinding Unit of the Corporation for certain period. In year 1999, claimants filed writ petition No. 5927 of 1999 before High Court of Delhi seeking regularization of their services with the Corporation. Writ petition came to be dismissed, with liberty to the claimants to approach the appropriate Government for seeking a reference of their dispute to the industrial adjudicator. In the meantime Government of India took a decision for closure of aforesaid seven non operating units of the Corporation. The aforesaid units were closed by the Corporation, after seeking permission from the appropriate Government, vide its order dated 14-7-2008. Closure compensation was paid to the claimants, as contemplated by the provisions of Section 25-FFF of the Industrial Disputes Act, 1947 (in short the Act).

3. Before the closure order was passed, the claimants approached the Conciliation Officer through Cement Corporation of India Karamchari Sangarsh Union and filed a claim statement, claiming their regularization in the services of the Corporation. Conciliation proceedings resulted into a failure. Conciliation Officer submits his failure report before the appropriate Government. On consideration of the said failure report, the Government took a decision and referred the dispute to this Tribunal for adjudication, vide its order No. L-29011/101/2002-IR(M), New Delhi dated 14th of November, 2003, with the following terms :

> "Whether the demand of the CCI/DGU Karamchari Sangarsh Union in relation to regularisation of the services of S/Shri Shyamji Dubey (Time Keeper),

Akshey Kumar, Clerk, Ram Lakhan, Clerk, Surya Deo Das, Mali and Subh Narayan, Clerk by the management of Cement Corporation of India, Delhi Cement, Okhla Industrial Area, New Delhi, is just, fair and legal? If yes, what relief workmen are entitled to and from which date? "

4. Claim statement was filed by the claimants pleadings that they joined services of the Corporation on various dates starting from July 1992 to July 1995. Since the dates of their joining the services, they are discharging duties as clerks, and mali etc. on adhoc basis. They have rendered services to the Corporation from last 5-6 years. Job performed by them are of perennial in nature and permanent. The Corporation have over looked their rich and vast experience and recruited many juniors as regular employees, which act is unjust and amounts to unfair labour practice. The Apex Court in Piara Singh [1992(4) S.C.C. 118] have ruled that "when a temporary and ad-hoc appointment is continued for long, the Court presumes that there is need which warrants for regular posts and accordingly directs regularization". Regularisation of their services is governed by sacrosanct principles laid in the provisions of Articles 38, 39, 40, 41,42 and 43 of the Constitution of India. Principles of Labour laws are based on rule of equity, fair play and natural justice. Keeping them as adhoc employees for long is against canons of law laid in the Act. They present that a right for regularization of their services has accrued to them. A claim has been made that the management be commanded to regularize their services with retrospective effect and necessary action may be initiated against the management for acts of unfair labour practice.

5. The Corporation demurred the claim pleading that it has been declared a sick company by the Board. Consequently proceedings are liable to be stayed in view of the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. (Hereinafter referred to as the Sick Companies Act). Draft Rehabilitaiton Scheme was framed by the Operating Agency and forwarded to the Board for consideration and approval. No Rehabilitaiton scheme was approved by the Board. As per the directions of the Board, Operating Agency issued an advertisement in September, 2001, inviting tenders for expression of interests for outright sale of the Corporation. In its meeting dated 18-4-2002, Union Cabinet had accorded, in principal, approval for closure of seven non-operating units of the Corporation. Vide its order dated 28-1-2004, the Board accorded permission to the Corporation for approaching the Ministry of Labour, Govt. of India, New Delhi, seeking approval for closure of the seven units, including Delhi Grinding Unit. Delhi Grinding Unit was not doing any production since February, 1999 The claimants were engaged in Delhi Grinding Unit on ad-hoc basis, in case of exigencies. However, after suspension of operation there is hardly any work for them. While engaging them, requisite norms were not followed, at the instance of outside agencies. Claimants do not possess requisite qualifications for appointment to the posts on which they were engaged. As and when appointments were made on regular basis against vacant posts, recruitment rules were followed. Claimants cannot compare themselves with regular employees. Claimants, through their union, moved a memorandum on 6th of September, 2003 seeking severance of their relationship with the Corporation, by getting compensation at par with V.R.S. in vogue. They mentioned in the said memorandum that they were not interested in working with the Corporation. In view of thee facts their claim of regularization is uncalled for.

6. Claimants have made contradictory statements, one for regularization of their services and the other for compensation equivalent to regular employees, seeking voluntary retirement under V.R.S. No right has accrued in their favour to seek regularization. It has been claimed that the proceedings be stayed till consent of the Board is obtained. It has also been projected that the claim statement is liable to be dismissed.

7. On pleadings, following issues were settled by my Id. Predecessor :

(1) Whether there existed any industrial dispute between the parties? It so, its effect.

(2) Whether the reference has been properly espoused under the provision of law?

(3) As per reference?

8. Claimants, Shri Ram Lakhan, Shri Shyamji Dubey, Shri Surya Deo, Shri Subh Narain Singh and Shri Akshay Kumar unfolded facts in support of their claim. Affidavit of Shri P.S. Mehra, was tendered as evidence on behalf of the Corporation. Claimants abandoned the proceedings and they were proceeded under rule 22 of Industrial Disputes (Central) Rules, 1959. Hence, the claimants could not avail their right of cross examination of Shri Mehra. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri Praneet Ranjan, authorized representative, advanced arguments on behalf of the Corporation. None came forward to present facts on behalf of the claimants. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

Issue No. 2

10. Claimants have raised a dispute for regularisation of their services through C.C.I./D.G.U. Karamchari Sangharsh Union. The Corporation presents that the said union is not a representative union of its employees, working in the establishment. It is not a matter of dispute that the claimants were ad-hoc employees, while regular employees were also there in Delhi Grinding Unit of the Corporation. Ad-hoc employees were represented by

C.C.I./D.G.U. Karamchari Sangarsh Union. Whether the dispuste raised by the said union had acquired the status of an industrial dispute, is a proposition which needs consideration. For an answer to that proposition it would be expedient to take note of the definition of "workman" and "industrial dispute" an enacted by the Act, which are extracted thus :

> "(s) "work*man*" *mean* any *person* (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensum or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."
>
> "(k) " Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the emp*loyment* or non-emp*loyment* or the *terms* of employment or with the conditions of labour, of any person;"

11. The definition of "industrial dispute" referred above, can be divided into four parts, viz (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject-matter of the dispute, which should be connected with —(i) employment or non employment or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "Industry".

12. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, it that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of Section 2 of the Act. Here in the case, the Corporation does not dispute that the claimants are workmen within the meaning of clause (s) of Section 2 of the Act.

13. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of *Section* 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus :

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances. "

14. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660] Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the express "industrial dispute" "is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the

relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the Union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, science such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dipsute.

15. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965(1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Drona Kuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

16. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the casue of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran [1970 (1) LLJ 558].

17. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

18. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of Section

36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute *between* the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual *dispute*, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validate of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd., [1970 (II) LLJ 256].

19. It is not case of the Corporation that CCI/DGU Karamchari Sangharsh Union does not represent all ad-hoc employees working at Delhi Grinding Unit. Not even a whisper was raised by the Corporation to say that the said union is not representative union of ad-hoc employees, working at Delhi Grinding Unit of the Corporation. Ad-hoc employees working at Delhi Grinding Unit form a different category, since their interests are distinct and different than those of regular employees. For agitating their grievance the said union raised a platform and tried to seek redressal of grievances of the claimants. In such a situation the union is found to be a representative union of ad-hoc employees working in Delhi Grinding Unit of the Corporation. Espousal of the claim by the union, in respect of regularization of ad-hoc employees, attains a character of collective dispute. It has the support of all ad-hoc employees and cannot be termed as an individual dispute. It answers all ingredients of an industrial dispute. Issue is, therefore, answered in favour of the claimants and against the Corporation.

Issue No. 1 & 3.

20. First and foremost contention advanced by the Corporation is that it has been declared a sick company by the Board hence proceedings cannot be continued before this Tribunal. It has been contended that in view of these facts and the fact that the Delhi Grinding Unit has been closed and the claimants have received closure compensation, as contemplated by the provisions of Section 25FFF of the Act, there existed no industrial dispute between the parties. Therefore issue relating to declaration of the Corporation as a sick company also needs consideration. Effect of sickness in industrial companies, such as, loss of production, employment, revenue and locking up of investible funds of banks and financial institutions are of serious concern to the Government and Society at large. Alarming increase in incidence of sickness in industrial companies are noted these days. Law takes care of pre-sickness situation as well as post sickness situation. Under the Sick Companies Act procedure is provided to identify sick industrial company, establishment of the Board with power to enquire into and determine instances of sickness in an industrial company and device suitable remedial measures, other proposals and for proper implementation thereof. Section 22 of the Sick Companies Act provides for suspension of any proceedings for winding up of an industrial company or for execution, distress or the like against any of the properties of the industrial company or for appointment of a receiver in respect thereof. No suit for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances granted to the industrial company shall lie or proceed further, except with the consent of the Board or the Appellate Authority, as the case may be. For sake of convenience it would be expedient to reproduce the provisions of the said section, which are extracted thus :

> "22," Suspension of legal proceedings, contracts, etc.—(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, *notwithstanding anything contained* in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.
>
> (2) Where the management of sick industrial company is taken over or changed in pursuance of any scheme sanctioned under Section 18, notwithstanding anything contained in the Companies Act, 1956 or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law —

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) Where an inquiry under Section 16 is pending or any scheme referred to in Section 17 is under preparation or during the period of consideration of any scheme under Section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended to that all or any of the rights, privileges, obligations and liabilities accurring or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board :

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a Court, Tribunal, Officer or other authority, or of any submission, settlement or standing order and accordingly :

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any Court, Tribunal, Officer or other authority shall remain stayed or be continued subject to such declaration, and

(b) on the declaration ceasing to have effect :—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

21. Provisions of Section 22 of the Sick Companies Act donate that in following circumstances applications for winding up either do not lie or cannot be proceeded with without the concurrence of the Board or the Appellate Authority as the case may be : (1) when enquiry under Section16 is pending, (2) when any claim referred to under Section 17 is under preparation or consideration, (3) when sanctioned scheme is under implementation, and (4) when an appeal under Section 25 is pending. What is prohibited under Section 22 of the Sick Companies Act is any proceedings for winding up of an industrial company or for execution, distress or the like action against any of the properties of that sick company. An application for appointment of a receiver shall also not lie. Any suit for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loan or advance granted by the industrial company shall not lie or proceed further, except with the consent of the Board or the Appellate Authority, as the case may be. Operations of contracts, assurances of property, agreements, settlements, awards, standing orders or any other instrument, which creates any rights, privileges, obligations and liabilites on a sick company, shall remain suspended during an enquiry under Section 16, or a scheme is under preparation or consideration or has been sanctioned for implementation. As indicated above, any proceedings for winding up, for execution, distress or like action against properties of an industrial company shall not lie or proceed further, except with the consent of the Board or the Appellate Authority as the case may be. Other situations, which are prohibited by Section 22 of the Sick Companies Act : institution of a suit for recovery of money, appointment of a receiver or enforcement of any security, contractual or statutory obligations or of any guarantee in respect of any loan or advance granted by the industrial company. Such suit or proceedings shall not lie or proceed further, except with the consent of the Board or the Appellate Authority as the case may be.

22. By way of the present reference, the apporpriate Government seeks adjudication of the claim of

regularization put forward by the claimants. When the said claim was agitated or put forward before the authorities for settlement or adjudication, the claimants were in the employment of the Corporation. Claim of regularization in service does not burden the Corporation in respect of its responsibilities, which are addressed to by the Sick Companies Act. Therefore, the claim put forward by the claimants does not fall in any of the categories referred above, in respect of which legal proceedings shall not lie, except with the consent of the Board or the Appellate Authority, as the case may be. The Tribunal's jurisdiction, to proceed with the adjudication of the reference, relating regularization of services of the claimant, has not been suspended by the provisions of section 22 of the Sick Companies Act. The Corporation is not prevented from making use of its own assets, which may affect it working or finances by the present terms of reference. Therefore, the provisions of section 22 of Sick Companies Act nowhere come in operation, to obliterate the present proceedings. In view of the foregoing discussions it is concluded that proceedings before this Tribunal shall not obviate or suspend when enquiries *under* section 16 of the Sick Companies Act or preparation of scheme under section 18 of the said Act were pending/in operation.

23. Shri Ram Lakhan admits in his testimony that Delhi Grinding Unit has been closed since February 1999. Shri Shyamji Dubey also admits that there is no production in Delhi unit of the Corporation since Febru*a*ry 1999. Shri Surya Dev gives confirmation to the facts in that regard. Shri Shubh Narain could not dispute the factum of closure of Delhi Grinding Unit of the Corporation. In his testimony, Shri Akshay Kumar feigned ignorance about the closure of the Delhi Grinding Unit of the Corporation. Shri Pratap Singh Mehra unfolds facts in his affidavit dated 19-1-2010 that on 28-7-2008, the Corporation issued notice of closure of its seven units at Mandher, Kurkunta, Charkhi Dadri, Adilabad, Akaltara, Nayan Gaon and Delhi Grinding Unit. Pursuant to the notice of closure, claimants were given closure compensation and other consequential benefits. Their payment receipts have been placed before the Tribunal, unfolds Shri Mehra. Since the undertaking has been closed, claim put forward by the claimants has become infructuous.

24. Out of facts unfolded by the claimants as well as those detailed by Shri Mehra, it stands established that the Delhi Grinding Unit of the Corporation has been closed and notice in that regard was issued on 14-7-2008. Closure compensation and other consequential benefits were paid to the claimants. Records tell that a sum of Rs. 51562.00 was paid to Shri Surya Dev, a sum of Rs. 52041.00 was paid to Shri Ram Lakhan, a sum of Rs. 64424.00 was paid to Shri Shubh Narain, a sum of Rs. 62202.00 was paid to Shri Akshay Kumar and a sum of Rs. 60151.00 was paid to Shri Shyamji Dubey. Testimony of Shri Mehra that the undertaking at Delhi Grinding Unit stood closed have not been dispelled.

25. Provisions of Section 25-FFF of the Act enact certain obligations on the employer to be satisfied on closure of business. Those obligations are not even pre-conditions of closure. The right of employer to close down his business cannot be questioned. The only requirement of law is that he should comply with the requirements of sub-section (1) of Section 25FFF of the Act. Here in the case, no eyebrows were raised by the claimants as to genuineness of closure of Delhi Grinding Unit of the Corporation. It stood established that Delhi Grinding Unit has been closed in fact and no policy was adopted by the Corporation for carrying on the business in a different manner. Therefore, closure of Delhi Grinding Unit is found to be real and genuine. Once an industry is closed down and is admitted or found that the closure is real and bonafide in the sense that it is a closure in fact, any dispute arising with reference there to would fall outside the purivew of the Act and that will, therefore, be so, if the dispute arises—if such can be conceived after the closure of the business between quondam employer and the employees, as the defintion of the industrial dispute pre-supposes continued existence of the *industry*. Here is the case, requirement of provisions of sub-section (1) of Section 25FFF of the Act were fulfilled by the Corporation and it had closed its undertaking at Delhi Grinding Unit. No production was there since February, 1999. Under these circumstances, there remains no industrial dispute to be adjudicated.

26. As detailed above claimants seek regularization of their services, pleading that they were working with the Corporation from last 5-6 years on jobs which are of perennial in nature. On that issue the Corporation presents that they were engaged as adhoc employees, in case of necessity. Their engagement was not in accordance with the rules of recruitment. They were engaged at the instance of outside agencies, without any conformity with the recruitment rules. During the course of arguments no dispute was raised on behalf of the claimants to the propositions referred above.

27. A 'seasonal workman' is engaged in a job which last during a particular season only, while a temporary workman may be engaged either for a work of temporary or casual nature or temporarily for work of a permanent nature, but a permanent workman is one who is engaged in a work of permanent nature only. The distinction between permanent workman engaged on a work of permanent nature and a temporary workman engaged on a work of permanent nature is, in fact, that a temporary workman is engaged to fill in a temporary need of extra hands of permanent jobs. Thus when a workman is engaged on a work of permanent nature which last throughout the year, it is expected that he would continue there permanently unless he is engaged to fill in a temporary need. In other words a workman is entitled to expect permanently of his service. Law to this effect was laid by the Apex *Court* in Jaswant Sugar Mills [1961(1) LLJ 649].

28. Some casual workmen employed in a Canteen, raised demand of permanency in service. The Tribunal directed that from particular date they should be treated as probationer and appointed in permanent vacancy without going into the question as to whether more than permanent workmen were necessary to be appointed in the canteen, over and above the existing permanent strength to justify the making of the casual workman as permanent, where they were working. Neither there was any permanent vacancy in existence nor the Tribunal directed for creation of new posts. When the matter reached the Apex Court, it was announced that the Tribunal was not justified in making these directions. The workman may be made permanent only against permanent vacancies and not otherwise, announced the Apex Court in Hindustan Aeronautics Limited Vs. their workmen [1975 (II) LLJ 336].

29. In Uma Devi [2006(4) SSC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or adhoc capacity for a fairly long spell. The Court rules thus :

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes on the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement herein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

30. Taking note of some of recent decisions, the Apex Court held that the States does not enjoy a power to make appointments in terms of Article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006(2) SCC 482] with approval, wherein it was ruled thus :

> "The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution".

31. In P. Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment cannot be relaxed and court cannot direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, adhoc or daily rated employee) or payment of regular salaries to them.

32. In Uma Devi (supra) it was laid that when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expecting for being confirmed for the when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out

any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to a back door entry.

33. However the Apex Court was considerate in the matter of temporary employees, who are working continuously since long. For the sake of convenience it would be expedient to reproduce the missives of the Apex Court, in Uma Devi (supra), which are extracted thus :

> "One aspect need to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without intervention of orders of the courts or of tribunal. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened based on this judgement, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

34. In view of the law laid by the Apex Court, it is evident that claim of regularisation of the services of the employees, who have been appointed in an illegal manner, cannot be considered by the State, its instrumentalities or the Courts, to frustrate the claim of the persons who are ready to compete for those posts. It is well settled proposition of law that the State cannot make appointments to a post in violation of its policies of recruitment. However, the persons who are working on the posts for more than ten years or more, against which posts they were appointed in irregular manner, the State is under a command to take steps for their regularization, as one time measure.

35. For application of the command of the Apex Court in Uma Devi (Supra), it is incumbent upon the claimants to show that their engagement was not in violation of the rules. They have to bring it over the record that their engagement was irregular and lasted for a long period. Claimants plead that they were working with the management from last 5-6 years, as ad-hoc employees. The management presents that Vinay Kumar Jha and Saroj Kumar were engaged in July and December, 1998, that too in the case of exigency and without following normal rules of recruitment. Consequently it is emerging over the record that claimants were engaged by the management dehors the rules and that they too not from a long period. Regularisation of services would mean to condone any procedural irregularities and to cure such defects which is attributable to methodology followed in making appointments. Consequently for seeking their regularization in service, the claimant had to show that they were appointed in consonance with the recruitment rules, but there were some procedural irregularities. Only in that event they can seek their regularization of service with the management in terms of the command given by the Apex Court in Uma Devi (supra). When the claimants were engaged in violation of the recruitment rules, their claim of regularization is in the form of back door entry in Government job. Consequently their claim of regularization in service of the Corporation cannot be granted.

36. Delhi Grinding Unit of the Corporation was closed at 14-7-2008, after seeking permission from the appropriate Government. Closure compensation was paid to the claimants in accordance with the provisions of Section 25-F of the Act. It is evident that after closure of the establishment, the Corporation does not have any vacancy for regularization of the services of the claimants. In such a situation the claimants cannot agitate their grievances, after payment and acceptance to closure compensation. Demand of the union for regularization of the services of the claimants is neither legal nor justified on that count too. Issues are therefore, answered in favour of the Corporation and against the claimant.

Relief.

37. In view of the foregoing discussions, it is evident that demand of CCI/DGU Karamchari Sangharsh Union, in relation to the regularization of the services of the claimants, at Delhi Cement Grinding Unit, Okhla Industrial Area, New Delhi, is neither just nor fair nor legal. Claimants are not entitled to any relief. Their claim is liable to be dismissed. Hence the same is dismissed. And award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 22-10-2012 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 17 जनवरी, 2013

का. आ. 389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 42/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/92/2010-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 16-1-2013.

[No. L-12012/92/2010-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 3rd January, 2013

PRESENT : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 42/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes, Act, 1947 (14 of 1947), between the Management of Allahabad Bank and their Workman).

BETWEEN

Smt. A. Sarada : Petitioner/1st Party

Vs.

The Regional Manager : Respondent/2nd Party
Allahabad Bank, Regional Office,
Anna Theatre Building, Anna Salai,
Chennai-600002

APPEARANCES :

For the Petitioner : Sri D. Muthukumar, Advocate

For the Management : M/s T. S. Gopalan & Co., Advocates

AWARD

1. The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/92/2010-IR(B-II) dated 11-5-2011 referred the following Industrial Dispute to this Tribunal for adjudication :

The schedule mentioned in that order is :

"Whether the action of the management of Allahabad Bank, Chennai in striking off the name of Ms. A. Sarada, an Ex-Sweeper-cum-Peon from the rolls of the Bank from 20-3-2007 is legal and justified ? If not, to what relief the workman is entitled to ?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 42/2011 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The Claim Statement averments briefly read as follows :

Petitioner appointed as a Sweeper under the Respondent as per order dated 2-4-1981, confirmed w.e.f. 3-10-1981 as per ordere dated 6-10-1981, and thereafter promoted as Sweeper-cum-Peon on 14-8-1991 underwent kidney surgery in 1990. Thereby she had been suffering diseases periodically such as Stomach Pain, her health condition becoming bad and immunity level going low. Now she has only one kidney. Respondent being aware of her health condition allowed her leave whenever needed. In 2003 due to worsening of health condition she was forced to be on leave from 17-11-2003 for treatment with due information to the Branch Manager of the Bank. On her improvement when she approached the Branch Manager, Mr. Gopalakrishnan in December, 2004 medical certificate was insisted. On 26-1-2005 she approached with Medical Certificate but she was refused to be permitted to join duty insisting for order from higher authority for which she requested in writing and is awaiting reply. Branch Manager also received all the medical certificates from the petitioner. Petitioner repeatedly requested for permission to join duty which the Branch Manager repeatedly declined for want of a reply. Petitioner suffered again and was admitted in hospital with due information to the respondent under letter dated 5-7-2006. Again on 5-8-2006 she approached for duty with proper medical certificate which again was disallowed. She then wrote a letter to the General Manager on 31-12-2007. Then it was replied that due to her long absence she was treated to have voluntarily retired and her name struck off from the muster roll, communicated at her last recorded address but which was returned un-served followed by a publication in the newspaper on 17-2-2007. Petitioner was deliberately not allowed to rejoin duty even after advice of Personnel Manager in his letter dated 17-3-2005 which she came to know only belatedly. The Branch Manager never asked her for her address for communication. He had clearly known her address. By then letters were sent in her old

address which shows malafides on his part resulting in her dismissal. There was no prior notice issued to her before the paper publication. In view of the petitioner approaching the Branch Manager since 2004 onwards question of want of whereabouts does not arise. No enquiry was conducted before the action. Invocation of provision under 8th Bipartite Settlement is illegal and in excess of power. Section-25F of the ID Act is not followed. Action is highly illegal and violative of natural justice. Petitioner never received any communication. Petitioner is not a deserter. she only took leave for disastrous health condition which was after due information. She informed her willingness to join duty. She was not permitted to join duty and was kept away from work without any basis. Getting order from higher authority had nothing to do with the petitioner's joining duty. Before striking off her name no notice was given. She was not served order of strike off her name. Procedure adopted is illegal and violative of natural justice. Respondent arbitrarily threw her out of service in an illegal manner serving of notice to old address is a cooked up story. Punishment is grossly disproportionate. Punishment is to be interfered with under Section-11A of the ID Act setting aside the impugned order and she be reinstated with all benefits.

4. Counter Statement averments bereft of unnecessary details are as follows :

Under Clause-33 of the 8th Bipartite Settlement how prolonged absence should be dealt with is provided for which reads as follows :

"(i) When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the Management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of the 30 days satisfying the management inter alia, that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules, conditions of service.

If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given 90 days of absence or within the 30 days' period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice, but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this Clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this Clause is sent to the employee by registered post acknowledgement due at the last recorded address, communicated in writing by the employee and acknowledged by the Bank, the same shall be deemed as good and proper service".

5. Even since her commencement of service petitioner had been irregular in attendance and resorted to unauthorized absence frequently for longer periods. Her unauthorized absence from 2-11-2003 was very long and continuous. In her letter dated 27-1-2005 she stated that her absence from 7-11-2004 was due to ill health and she would report for duty. In the letter she gave the address only as no. 3, K. K. Kovil Street, 2nd Street, Chetput, Chennai-31. A notice was sent in the address. On 15-2-2007 notice was sent to her residential address in the LSA Application dated 21-3-2001 asking to report for duty within 30 days of the notice with caution that on her failure to do so she would be deemed to have voluntarily vacated and her name will be struck off from the rolls. Notice in

vernacular language was published in Dinamalar paper dated 17-2-2007 to which petitioner did not respond. So it was concluded that she vacated the employment which was informed by letter dated 29-3-2007 that her name was struck off. This is a case of voluntary cessation of employment under Clause-33 of the 8th Bipartite Settlement dated 2-6-2005. The dispute is bad for delay and latches. It is not a case of termination of employment answerable by the Respondent. 2A dispute is not maintainable. Respondent has reason to believe that she had heavily borrowed from various people and in order to avoid creditors she was avoiding attending for work. Attributing her absence for ostensible reason of ill-health cannot be countenanced being not supported by medical certificates for the period of her long absence. It is denied that she submitted medical certificates which were retained by the Branch. That she repeatedly approached the Branch Manager is not true. As was assured in her letter dated 5-7-2006 she did not report for duty on 26-7-2006. When she did not respond to notice dated 15-2-2007 she was rightly treated as having left the employment. In view of the limited scope of her absence after 27-6-2006 and March 2007 the reference to the letter dated 17-3-2005 that Personnel Manager advised the Branch to permit her to resume duty which the Branch Manager refused to act on the advice would have no bearing on the issue for consideration. In view of Bipartite Settlement "retrenchment" is not attracted. There is no violation of Section-25F. No exception can be taken for the action under Clause-33. Question for consideration is not the reason for her absence but her failure to obtain leave and reasons therefor and not responding to the communications. It is not a case of disciplinary action on invocation of principles of natural justice. If petitioner has not had access to 17-2-2007 paper publication and 15-2-2007 communication, Respondent is not liable. Petitioner has not applied for leave. This is not a case of punitive termination of service. There is no scope for interference. Claim is to be rejected.

6. Rejoinder Statement averments in a nutshell are as follows :

No Bipartite Settlement notice was served on the petitioner. It is denied that Bank had no knowledge of petitioner's address. Conditions in Clause-33 of Bipartite Settlement before imposing punishment have not been followed by the Bank which alone are enough to set aside the impugned order.

7. Points for consideration are :

(i) Whether striking off the name of Mrs. A. Sharda, Ex-Sweeper-cum-Peon from the rolls of the Bank from 20-3-2007 is legal and justified ?

(ii) To what relief the concerned workman is entitleed ?

8. Evidence consists of the testimony of WW1 and Ex. W1 to Ex. W6 on the petitioner's side and testimony of MW1 to MW3 and Ex. M1 to Ex. M33 on the Respondent's side.

Points (i) & (ii) :

9. Heard both sides. Perused the records, documents and evidence on either side. Both sides keenly argued in terms of their pleadings. Prominent arguments on behalf of the petitioner include that the mandatory requirements of conditions in Clause-33 of the 8th Bipartite Settlement having not been complied with by the Management in its invocation effecting requiring the giving of three notices. Notice should be in language known to the workman and should also contain the particulars mentioned in the clause. The said conditions have to be strictly followed as held by the Apex Court. Of the three notices required to be sent only one is sent but not received by the workman. There is malafides on the part of the Management to effect the cessation of the employment invoking the relevant clause. The first two notices are in English. Notice is seen sent by the Bank in the Ex. M2 address as well as in old address where the petitioner was not at all. Ex. M2 address was known to the bank. Notice was not sent to last known address. MW2 is not able to say how Ex. M2 was obtained. According to him if notices were sent to the petitioner in Ex. M2 address petitioner would have responded. It is only by the additional typeset of documents filed by the Respondent on 14-8-2012 that Ex. M15 (series)–Medical Certificates were produced. According to MW3 the Medical Certificates were produced only after 2004 giving rise to the inference that the Branch Manager had not produced the Medical Certificates to the higher authorities before. The case of the petitioner as pleaded is that she has produced medical certificates. It is in evidence from the testimony of MW3 that petitioner proceeded on leave on medical grounds. Paper publication is to be resorted to only if service of notice in the last known address is not possible. So question of paper publication being issued does not arise for the invocation of the clause. The question of petitioner's health problem is not disputed.

10. Crucial arguments on behalf of the Respondent are that this is not a case of dismissal or termination attracting Section-2A or 11A but attracts only Clause-33 of the 8th Bipartite Settlement. Under Ex W-2 Medical Certificate dated 31-7-2006 petitioner was fit to rejoin duty but she did not join duty. There is sufficient compliance of Clause-33 of the 8th Bipartite Settelement. The action is legal and justified. Petitioner may have had good reason but how long the Management can wait indefinitely. She has not worked for the period 2003–2007. It is a small branch with one Sub-Staff.

11. Reliance was placed on either side to various decisions of the Apex Court and High Courts. On behalf of the petitioner reliance was placed on the decisions in :

— Krushnakant B. Parmar Vs. Union of India and Another (2012-3-SCC-178) wherein it was held as "17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant".

— V. C. Benares Hindu Universy and Others Vs. Shrikant (2006-11-SCC-42) wherein it was held as :

"51. An order passed by the statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness. Such a test of reasonableness vis-a-vis the principle of natural justice may now be considered in the light of the decisions of this Court".

"54. This Court opined that right to life enshrined under Article 21 would include the right to livelihood and thus before any action putting an end to the tenure of an employee is taken, fair play requires that reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

"64. The fact situation obtaining in this case is entirely different. Not only the respondent made all attempts to join his duties, but, the situation prevented him from doing so beyond his control. Furthermore, in this case, the Vice-Chancellor had no jurisdiction at all. Even the notification dated 25-3-1998 had no application".

Regional Manager, Central Bank of India Vs. Vijay Krishna Neema and Others (2009-5-SCC-567) wherein it was held as :

"22. .....The appellant has merely produced a photostat copy of the envelope. There was nothing to show that the notice was sent under registered cover with acknowledgement due".

"23. Furthermore, there is nothing to show that the fact that the Respondent has changed his address was not known to the officers of the Bank".

12. On behalf of the Respondent reliance was placed in the decision of the Supreme Court in :

— Bata Shoe Company (P) Ltd. Vs. Ganguly (DN) and Others (1961-I-LLJ-303) wherein it held "The proper course in our view was when the registered notices came back unserved in the case of these eleven workmen to publish notices in their names in some newspaper in the regional language with a wide circulation in Bihar alongwith the charges framed against them".

13. On a consideration of the rival contentions and on scrutiny of the materials on record I am led to the conclusion that this is not a fit case to effect cessation of the employment of the petitioner invoking Clause-33 of the 8th Bipartite Settlement. As rightly argued on behalf of the petitioner that for invoking the clause the mandatory conditions of the clause have to be adhered to strictly. All of the notices have not been in the language known to her. The notices were being returned undelivered. The addresses in which the notices were sent have not been proved to be the last known address. There have been more than one address of the Petitioner during her period of unauthorized absence. Notices were sent in those addresses. Admittedly they were not served but were being returned un-served, where after paper publication was effected, despite all of which petitioner did not respond. Thereafter Management was proceeding against the petitioner treating the petitioner to have vacated office under Clause-33 of the 8th Bipartite Settlement. It deserves consideration whether in order to invoke Clause-33 of the settlement should not there have been proper personal service of the notices contemplated herein culminating in a final notice being actually served on the petitioner. True, when the notices are sent in the last known address by Redg. Post Ack. Due and in language known to the petitioner and the same being returned un-served it is lawful to presume that the notices are duly served and thereupon the invocation of Clause-33 can be given effect to. According to MW2, a witness of the Respondent Management if the notices were sent in Ex. M2 address the same could have been served and the petitioner would have responded the notices. Petitioner's definite case is that she has not received the notices and she has been approaching the Branch Manager for being permitted to join duty which was being denied by the Branch Manager stating that direction from higher authority has not been received. Again according to her in view of the said fact there is no question of any notices being served upon her or any publication being effected because she was frequently reporting before the Branch Manager for joining duty, which was not being allowed. The officials of the Respondent, 3 in number, though examined, have not been able to testify the case of the Management in a convincing manner. To very many pertinent aspects of the case their reply is that are not aware. According to MW3, petitioner

was on leave on medical grounds which is categorical. There is no dispute for the Management that petitioner has had health problems as the reason for her absence but her failure to obtain leave and the reason therefor and also why she is not responding to the communications are the questions. The fact that she has all along been maintaining that she has been sick periodically ever since her kidney surgery in 1990 such as stomach pain with health condition becoming bad and immunity level going low. Presently she is having only one kidney. She had been applying for leave earlier which was being approved by the Management. From 2003 onwards upto 2007 admittedly she has not worked. But her case is that since December 2004, she has been approaching the Branch Manager with medical certificate for permission to join duty but it was being declined which fact though is denied by the Management has not been able to be substantiated by it on whose behalf the witnesses examined as MW1 to MW3 have no clear or categorical version to support. Admittedly the notices were not received by the petitioner. It is especially to be noted that in industrial adjudications, which are predominantly fact finding bodies, the fact to be proved viz. service of notices on the petitioner, had to be actually proved and cannot rest on legal presumptions. Evidence Act provisions do not have strict application in the area of industrial adjudication. They at best provide tools of guidance for application to find out the fact and fact alone. Here is the matter of proof of actual service of notices on the petitioner to invoke Clause-33 of the 8th bipartite Settlement, the factum of Petitioner's long absence requires to be proved actually and not by presumptions. Her case is that she never received any communication and is never a deserter. No notice has been served to her in the old address. As laid down in the decision of the Supreme Court in 2012-3-SCC-178, if the absence is due to compelling circumstances such absence cannot be held to be willful even if without application or prior permission. In such cases the employee cannot be held guilty of failure of devotion to duty. As held in 2006-11-SCC-42, when an order passed by the statutory authority visits a citizen with civil or evil consequences the same must meet the test of reasonableness vis-a-vis principle of natural justice. Again before putting an end to the tenure of the employee in fairness reasonable opportunity to put forth his case should be given and a domestic enquiry should be conducted in terms of principles of natural justice.

14. Herein, though the cessation of employment of the petitioner was brought about under Clause-33 of the 8th Bipartite Settlement which is not tabooed in suitable or appropriate cases, on the facts made out in this case it is not deemed fit to extend the application of the provision of the clause to the case of the petitioner in as much as the conditions under the clause do not find satisfactorily complied with. There is no sufficient service of two notices successively culminating in the final notice on the petitioner. So the presumption of proper service of the notices cannot aptly be drawn in the case on hand so as to allow the clause to work itself out to attain the object of automatic cessation of the employment of the petitioner. A proper case to attract the application of the clause is not made out on the facts of the case. Therefore, the impact of the clause cannot be said to have worked out itself to attract automatic cessation of the employment of the petitioner. A self working clause or rule in order to work itself out, should be proved to have been fully satisfied as to the conditions on which it works and which has to be with the required efficacy, having regard to the object of the clause or provisions viz. to safeguard the interest of the institution against the employees unavailable in the institution owing to frequently going on leave with or without permission or leave. But in the application of the clause unless due care and caution is bestowed, employees due to compelling and avoidable reasons, when may not be able to conform to the rule for various eventualities shall not be put to suffer. It is the ultimate justice, say, social justice, that has to be prevail in any contingencies of human life in the dispensation of which the concept of "reasonableness" has vital role. Hence the order is vitiated and the same carries no effect rendering itself a nullity for the reason the impugned action falls to the nature of a punitive punishment of termination from service which is not in terms of Section 25F of the ID Act or after an enquiry. The petitioner is therefore entitled to reinstatement with continuity of service and all attendant benefits with back wages limited to 40%.

15. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd January, 2013).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner	:	WW1, Smt. A. Sarada
For the 2nd Party/ 1st Management	:	MW1, Sri S. Prabakaran MW2, Sri S. Gopalakrishnan MW3, Sri T. K. Rathnam

Documents Marked :

On the Petitioner's side :

Ex. No.	Date	Description
Ex. W1	16-08-2005	Letter issued by the management
Ex. W2	31-07-2006	Medical Certificate issued by the Government Doctor
Ex. W3	31-12-2007	Representation of the petitioner
Ex. W4	08-01-2008	Reply given by the Respondent

Ex. No.	Date	Description
Ex. W5	20-08-2009	Dispute raised by the petitioner under Section-2A of the I.D. Act
Ex. W6	01-02-2010	Reply filed by the Respondent

On the Management's side :

Ex. No.	Date	Description
Ex. M1	16-08-2005	Letter from the Respondent to Petitioner—unauthorized absent—calling for explanation
Ex. M2	22-06-2006	Letter from Chief Manager of Respondent Bank to their General Manager—enclosing two letters dated 16-06-2006—with postal endorsement—Returned undelivered.
Ex. M3	20-09-2006	Letter from Respondent (AGM) to Petitioner—unauthorized absence
Ex. M4	27-01-2005	Letter from Petitioner to Respondent—Could not come due to health condition—07-11-2004 to 26-01-2005
Ex. M5	22-05-2004	Letter of the Senior Manager, Service Branch, Chennai to Sri S. Prabhakaran, Manager, Allahabad Bank, Service Branch, Chennai
Ex. M6	24-11-2004	Letter from Respondent to Petitioner—unauthorized absence—Returned undelivered with Postal endorsement "Left"
Ex. M7	10-12-2003	Unauthorized absence without prior sanction—on various dates from 30-07-2003
Ex. M8	24-09-2004	Letter from Respondent to Petitioner—unauthorized absence from 07-11-2003—to resume duty with explanation
Ex. M9	29-07-1998	Letter from Respondent to Petitioner—unauthorized absence from 09-02-1998 without prior permission or sanction of leave—calling for explanation—with the Acknowledgement of Petitioner dated 30-07-1998
Ex. M10	06-03-1998	Letter from Petitioner to Respondent—stating could not come for work due to health condition and will report for work soon.
Ex. M11	26-03-1998	Letter from Petitioner to Respondent—ill health continues—will report for work within this week—will produce Medical Certificate when reporting for work
Ex. M12	23-07-1998	Letter from petitioner to Respondent—Could not come for work due to health condition from 09-02-1998 to 22-07-1998—Enclosing Medical Certificate—Fit to resume duty on 23-07-1998
Ex. M13	10-08-1998	Reply of Petitioner to Respondent
Ex. M14	21-08-2002	Head Office Circular No. 7445/PER/ADMN (HRD)/2002-03/2002 is the departmental instructions with
Ex. M15	27-01-2005	Letter from Chief Manager, Allahabad Bank, Service Branch, Chennai to DGM, Zonal Office, Chennai enclosing Medical Certificates given by the petitioner.
Ex. M16	28-01-2005	Letter from Chief Manager, Service Branch, Channai addressed to DGM, Zonal Office, Chennai
Ex. M17	18-12-1992	Letter from Respondent to Petitioner—Absenting from work without information from 7-12-1992 and informing earlier absence on various dated between 26-10-1992 to 07-12-1992
Ex. M18	24-8-1993	Letter from Respondent to Petitioner—MDS/ADM/534—Absenting from work from 02-08-1993—with copy of postal cover—"Left"—Returned undelivered
Ex. M19	19-10-1993	Letter from Respondent to Petitioner—MDS/ADM/570—Absenting from work from 02-08-1993—with copy of postal cover
Ex. M20	10-06-1994	Letter from Respondent to the Petitioner—unauthorized absence from 02-08-1993 without proper leave application and Medical Certificate and to produce

Ex. No.	Date	Description
		fitness certificate while joining duty.
Ex M21	19-03-1998	Letter from Respondent to Petitioner—Absence from duty from 09-02-1998.
Ex M22	—	Letter from Petitioner to Respondent—Jaundice—Stating will join duty within this week.
Ex M23	23-07-1998	Reply of Respondent to Petitioner's letter dated 23-07-1998.
Ex M24	15-02-2007	Copy of the letter from the Respondent Bank addressed to the petitioner in Tamil and English with acknowledgements.
Ex M25	15-02-2007	Copy of the Dinamalar paper publication in Tamil.
Ex M26	29-03-2007	Copy of the letter (Page 48 to Page 52) regarding communication from Zonal Office, Chennai to the petitioner.
Ex M27	02-12-1993	Letter from Petitioner to Respondent.
Ex M28	09-01-2004	Letter from Petitioner to Respondent.
Ex M29	24-09-2004 27-09-2004	Postal Acknowledgement with signature of petitioner in proof of service of respondent's letter—SRBRCH/SHAR/UNAUB/03 dated 24-09-2004 addressed to Smt. A. Saradha at 3, KK Kovil Street, Second Street, Chetpet, Chennai-31.
Ex M30	---	Letter from Chief Manager Service Branch to Smt. A. Sarada, Chennai regarding unauthorized absence.
Ex M31	22-06-2006	Letter from Chief Manager to the General Manager, Service Branch, Chennai.
Ex M32	07-04-1998	Letter from one M. Vembuli to Respondent—complaint—cheque given by the petitioner returned—requesting to collect the money from Petitioner and pay it to him.
Ex M33	23-07-1998	Letter from Respondent to Dr. Prabakar, Asian Hospital, Madras-90.

नई दिल्ली, 17 जनवरी, 2013

का. आ. 390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 715/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/175/2003-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 715/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 16-1-2013.

[No. L-12012/175/2003-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : SRI A. K. RASTOGI, Presiding Officer

Case No. I.D. 715/2005

Registered on 25-8-2005

Shri Gurdip Singh,
S/o Sh. Dayal Singh,
VPO Sangowal,
Teh. and Distt. Ludhiana ... Petitioner

Versus

The Senior Manager,
Punjab and Sind Bank,
DGM Office,
Near Kailash Chowk,
Ludhiana ... Respondent

APPEARANCES :

For the Workman : Sh. B. N. Sehgal

For the Management : Sh. J. S. Sathi

AWARD

Passed on 28-12-2012

Central Government vide Notification No. L-12012/175/2003-IR(B-II)) Dated 15-12-2003, by exercising its powers under Section 10 Sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947

(hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

> "Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Gurdeep Singh S/o Dayal Singh, Ex-Peon, Daily wages basis w.e.f. 24-8-2002 without any notice and without any payment of retrenchment compensation is legal and justified ? If not, what relief the concerned workman is entitled to and from which date ?"

The case of the workman is that he had been appointed Peon in the Punjab and Sind Bank on daily rate basis at VPO Jaspal Banger w.e.f. 6-8-1997 and was transferred in June 2002 to another branch of the bank at Gill Road, Ludhiana. On 24-8-2002 his services were terminated in violation of the mandatory provision of Section 25F of the Act and while terminating his services his juniors in the same category were retained in service and other workmen in the same categories were also appointed after his termination. Thus the workman has alleged the violation of Sections 25G and 25H of the Act also. He has claimed his reinstatement with continuous service and back wages.

The claim was contested by the management and it was alleged that the workman had been appointed to meet the exigencies of the service and it is wrong to allege that he had been transferred to Gill Road Ludhiana. At Gill Road Ludhiana it was his fresh appointment and not transfer. His services were not terminated. He was simply not re-employed when his services were not required. A daily wager is not entitled to protection under Section 25F of the Act. His appointment was not according to Rules and he has no right to continue in service. At present there is no post of Peon. It was also denied that persons junior to the workman were retained in the service or anyone was engaged afresh after the relieving of the workman.

Workman filed a replication to say that he had been appointed by a competent authority and his appointment was not unauthorized. It was further said that even a daily wager is entitled to the protection of Section 25F of the Act and the provisions of Section 25G and 25H also of the Act cannot be violated in his case.

In evidence the workman examined himself while on behalf of the management Jasvir Singh, Manager was examined. The workman had summoned certain service records which were not produced by the management and it was alleged that the record is not available in the branch. Management however filed tabulated statement as Annexure R1 and R2 along with affidavit.

I have heard the learned counsel for the parties and perused the evidence on record. It was argued by the learned counsel for the management that the appointment of the workman was not according to Rules hence, he is not entitled to the protection of Section 25F of the Act. I do not agree with the learned counsel on this proposition of law. In Headmaster Government High School Behrana Vs. Ajit Singh and another 2003 (5) SLR 766 cited by the learned counsel for the management the Hon'ble High Court has nowhere laid down that the provisions of Section 25F of the Act are not applicable to the case of a workman, who had made an entry into the service from backdoor. The Hon'ble Court has denied the right of reinstatement to such a workman. In Srirangam Cooperative Urban Bank Limited Vs. Labour Court Madurai 1996 (2) LLJ 216 a Division Bench of the Madras High Court held that whether the appointment was made in accordance with the law or not, does not make any difference, and what is of relevance is the fact of employment and not the legality or otherwise, of it. Similarly a Division Bench of Madhya Pradesh High Court in Rajesh Kumar Vs. State of Madhya Pradesh (1994) 2 LLJ 320 held that termination of the employment of a probationer or of an invalidly appointed worker will be 'retrenchment' because an invalid appointment is not one of the exceptions to the provisions of the main definition of 'retrenchment'.

The learned counsel for workman argued that the services of the workman were terminated without complying the provisions of Section 25F of the Act. But I am of the view that necessary requisite for the applicability of Section 25F has not been pleaded even, by the workman. It has not been pleaded that the workman had completed the continuous service of not less than one year or he has served 240 days within 12 calendar months preceding the date of his termination. Against it, the management has alleged that the engagement of the workman was need-based. The management witness in his affidavit has stated that the workiman had been engaged in different branches of the bank intermittently to meet the exigency of service and further that the workman did not render 240 days of service in continuity during any span of time. Thus until it is pleaded and proved that the workman has been in continuous service of not less than one year of the management the workman cannot claim the protection of Section 25F of the Act.

The workman has alleged the violation of Sections 25G and 25H of the Act but there is no evidence that any person junior to the workman was retained at the time of his disengagement. Hence no violation of Section 25G is proved.

With regard to the violation of Section 25H of the Act there is some evidence but the violation of Section 25H is not in the ambit of the reference. The reference is about the termination of the service of the workman without any notice and without any payment of retrenchment compensation. The Hon'ble Punjab and Haryana High Court has laid down in Karnal Central Co-operative Bank Vs. Presiding Officer Industrial Tribunal-cum-Labour Court 1994 LLR 248 that the re-employment in terms of Section 25H of the Act pre-supposes a valid termination in the first

instance and, therefore, constitutes a different cause of action and can be gone into by the Labour Court only if the reference is to be made in this regard but not otherwise. It cannot be described as a matter incidental to the dispute relating to termination.

From the above going discussion it is thus clear that the workman has failed to plead even, his entitlement to the protection of Section 25F of the Act. Hence it cannot be said that the action of the management of the Bank in termination his service without any notice and without any payment of retrenchment compensation is illegal and unjust. The reference is answered against the workman. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जनवरी, 2013

का.आ. 391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 17) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसिज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 79/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/151/2001-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, Delhi, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 17-1-2013.

[No. L-12012/151/2001-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 79/2011

Shri Suresh Pal
S/o Sh. Dhara Jeet Singh,
R/o 410, Civil Lines North,
Muzaffarnagar-251001

... Workman

Versus

The Regional Manager,
Indian Overseas Bank,
LIC Building, Opp. University Office,
Mangal Pandey Nagar,
Meerut (U.P.) – 250001 ... Management

AWARD

A casual labour was engaged by Indian Overseas Bank (in short the bank) in its branch at Muzaffar Nagar, U.P. to do casual jobs. He was engaged often and then. His engagement started somewhere in 1992 and lasted till October, 2000. When he was not engaged any further he raised a demand on the bank for reinstatement of his service. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. Since the bank contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/151/2001-IR (B-II), New Delhi dated 29-11-2001 with following terms :

> "Whether action of Regional Manager, Indian Overseas Bank, Meerut in terminating the service of Suresh Pal with effect from 17-10-2000 is fair and justified ? If not, what relief he is entitled to ?"

2. Claim statement was filed by the casual labour, namely, Shri Suresh Kumar pleading therein that he employed as labour by the bank. He joined his service on 23-4-1992. He served the bank to entire satisfaction of his superiors. He was paid less wages, then the wages meant for the post of messenger. He worked continuously without any break. His services were terminated on 14-10-2000, when he demanded his wages for the month of September, 2000. Provisions of Section 25F of the Industrial Disputes Act, (in short the Act) were not complied with. Termination of his services is illegal and against the industrial law. He claims reinstatements in service with continuity and full back wages.

3. Claim was demurred by the bank pleading that the claimant was engaged on casual basis, in case of exigencies to serve drinking water to the staff. He was paid at the rate of Rs. 50.00 per day. He never worked as a messenger. Recruitment process was not followed, when claimant was engaged. The claimant never rendered continues service with the bank. It does not lie in his mouth that he joined service on 23-4-1992. His services were dispensed with on 14-10-2000. There was no question of complying with the provision of Section 25F of the Act, since the claimant had not rendered continuous service of 240 days. His claim for re-instatement in service with continuity and full back wages is unfounded. It may be dismissed being devoid of merit, pleads the bank.

4. Vide order No. Z-22019/6/2007-IR (C-II), New Delhi dated 11-2-2008, case was transferred to Central Government Industrial Tribunal No. 2, New Delhi, for

adjudication, by the appropriate Government. It was retranferred to this Tribunal, for adjudication by the appropriate Government, vide order No. Z-22019/6/2007-IR (C-II), New Delhi dated 30-3-2011.

5. Claimant examined himself in support of his claim, Shri Peeru Singh, Assistant Manager, was brought in the witness box by the bank. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Claimant opted not to advance oral arguments. He filed written submission. Shri Suresh Pal, authorized representative, assisted by Shri Peeru Singh, Assistant Manager, raised his submissions on behalf of the bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

7. The claimant unfolds in his affidavit Ex. WW-1/A tendered as evidence, that he was engaged by the bank on 23-4-1992 as a messenger. He continuously served the bank up to 14-10-2000. On this point Shri Peeru Singh projects that the claimant was engaged by the bank on daily wages to serve water to the staff. His wages were paid for actual days of work. Out of facts unfolded by the claimant and those projected by Shri Peeru Singh, it came to light that the claimant was engaged by the bank for casual jobs. He was paid for actual days he worked with the bank. Consequently it is clear that relationship of employer and employee existed between the bank and the claimant.

8. The claimant presents that he served the bank continuously from 1992 till the year 2000. According to him there was no break in his service. Contra to it Shri Peeru Singh presents that he was engaged by the bank often and then in case of exigencies. Consequently it is emerging over the record that there is a dispute on the fact that the claimant rendered continuous service with the bank for a period of 240 days in any of the calender year. For an answer to the preposition, it would be construed as to what term "continuous service" means. "Continuous Service" has been defined by Section 25B of the Industrial Disputes Act, 1947 (in short the Act). Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service". Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab. I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act.

9. To discharge onus to prove continuous of one year, the claimant places reliance on Ex. MW-1/1 proved by Shri Peeru Singh. Shri Peeru Singh details in Ex. MW-1/1 the period for which he was engaged from August, 1999 till August, 2000. When this document is perused, it came to light that the claimant was engaged for 250 days from August, 2000 till September, 1999, preceding 12 months from the date of termination of his service. Thus it is emerging over the record that as per own admission of the bank, the claimant rendered 250 days service in preceding 12 months from the date of his disengagement.

10. Question would be as to whether disengagement of the claimant amount to retrenchment of his service. For an answer to this proposition definition of the term 'retrenchment' is to be construed. Definition of the term "retrenchment" enacted by Section 2 (oo) of the Act is extracted thus :

> "(oo) 'retrenchment' means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include :
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health"

11. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii)

termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363]".

12. As projected above termination of the claimant for whatsoever reasons, other than those which falls within the exceptions provided in main part or second part of the definition, amounts to retrenchment. Thus it is crystal clear that disengagement of the claimant with effect from August, 2000 amount to retrenchment. Since the claimant had rendered continuous service of 250 days in preceding 12 months from the date of retrenchment of his service, provisions of Section 25F of the Act came into play. Since no notice for a period of one month or pay in lieu thereof and retrenchment compensation was given, termination of his services was violative of provisions of Section 25F of the Act.

13. Claimant projects that he was in continuous service of the bank since 1992 while the bank disputes that proposition. Documents relied by the claimant, which are Ex. WW-1/54 to Ex. WW-1/62 and Ex. WW-1/43, highlight that the claimant was engaged by the bank often and then since 1992 till 2000. Claimant probablize a proposition that he was engaged by the bank from 1992 till 2000. Though onus is cast on the employee to prove continuity of service with the employer, yet there are certain circumstances wherein the Tribunal may draw an adverse inference for non-production of record by the employer. The Apex Court in R.M. Yeallati [2006 (1) SCC 106] ruled as follows :

> "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgment, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimate would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

The above position was again reiterated in recent judgements in Shyamal Bhowmik [2006 (1) SCC 337], Sham Lal [2006 VI Ad (SC) 1] and Gangaben Laljibhai and others [2006 VI AD (SC) 31].

14. As pointed out above the bank had not produced the entire record, which was in its possession. The claimant produced photo copy of the document, originals of which were with the bank. Despite the demand, originals were not produced. Therefore, it is a case of adverse inference against the bank. Placing reliance on proposition of law, referred above it is, ruled that the claimant has been able to establish that he was in continuous service or the bank since 1992. As projected above his services were dispensed in violation of the provisions of Section 25F of the Act. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad-hoc capacity for a fairly long spell. The Court ruled thus :

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts ? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to complete. With respect the directions made in Piara Singh [1924 (4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment

recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent"

15. When termination of service of an employee is found to be violative or provisions of Section 25F of the Act, under normal course he is entitled for reinstatement in service. However when the employee was engaged in service dehors recruitment rules, his claim for reinstatement in service cannot be said to be well founded.

16. In P. Chandra Shekara Rao others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (Supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs and Pharmaceuticals Ltd. [2007 (7) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment cannot be relaxed and court cannot direct regularization of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them.

17. In Uma Devi (supra) it was laid down "when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post, when an appointment to the post could be made only by following a proper procedure or selection in any concerned cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedent neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job".

18. As deposed by Shri Peeru Singh, the claimant was engaged in case of exigencies. There is no two opinion that the claimant was engaged by the bank in violation of recruitment rules. In case claimant is ordered to be reinstated in service, it would amount to back door entry in Government job. Hence I do not find it expedient to order for reinstatement in service, in favour of the claimant. Award of compensation in lieu of reinstatement would meet the ends of justice. To ascertain quantum of compensation, precedents are to be taken note of. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of compensation, which may be awarded to the claimant. In S. S. Shetty [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words :

> "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future ..... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

19. A Divisional Bench of the Patna High Court in B. Choudhary (1983) Lab. I. 1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and abtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to Tabesh Process, Shivakashi [1989 Lab I.C. 1887].

20. In Assam Oil Co. Ltd. [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In Utkal Machinery Ltd. [1966 (1) LLJ 398] the amount of compensation equivalent to two years salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A. K. Roy [1970 (1) LLJ 228] compensation equivalent to two years salary last down by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty [1962 (II) LLJ 483] the Count converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissed from service. In O. P. Bhandari [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M. K. Aggarwal [1988 Lab. I.C. 380], the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise by payable to the employee. In Yashveer Singh [1993 Lab. I.C. 44) the court directed payment of Rs. 75000 in view of reinstatement with back wages. In Naval Kishro [1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj [1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal [1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari [1988 Lab. I.C. 107] a compensation of Rs. 65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V. V. Rao [1991 Lab I.C. 1650] a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

21. As projected above the claimant was engaged by the bank in violation of the recruitment rules. Taking into account long service rendered by the claimant, the fact that he had to contest litigation for more than a decade and his prospect of future employment. I am of the view that an amount of Rs. One lac as compensation would meet the ends of justice. Therefore, in lieu of his reinstatement in service, a compensation of Rs. One lac is awarded to the claimant. Award is, therefore, passed in favour of the claimant and against the bank. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 24-12-2012

नई दिल्ली, 17 जनवरी, 2013

का.आ. 392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/50/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/50/2006-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17th January, 2013

S.O. 392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.CGIT-2/50/2006) of the Central Government Industrial Tribunal-cum-Labour Court-II, Mumbai, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 17-1-2013.

[No. L-12011/50/2006-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/50 of 2006

Employers in relation to the management of Central Bank of India

The Assistant Manager
Central Bank of India
Mumbai Main Office,
M. G. Road,
Mumbai-400 023

AND

Their Workmen

The National General Secretary,
All India Central Bank Bahujan
Samaj Karmachari Union,
CBI, Mumbai Main Office,
Ground Floor,
Fort,
Mumbai-400 023

APPEARANCES :

For the Employer : Mr. L.L. D'Souza, Representative

For the Workman : Mr. J. H. Sawant, Advocate

Mumbai, dated the 8th November, 2012

AWARD PART – 1

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/50/2006-IR (B-II), dated 4-9-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of Central Bank of India, Mumbai, Main Office, Mumbai in imposing the punishment of dismissal from service on Shri Chandrakant Koli, Clerk is legal and justified ? If not, what relief Shri Chandrakant Koli is entitled to ?"

2. After receipt of the reference both the parties were served with notices. In response to the notice the second party has filed his statement of claim at Ex-5. According to him he is permanent employee of the first party serving as a Clerk w.e.f. 1984. According to him the management by its memorandum dated 23-11-1992 kept him under suspension w.e.f. 13-11-1992 pending investigation in the criminal case filed against by the management. The said suspension order was revoked by the management by its order dated 30-12-1997 and he was allowed to resume his duty. They also paid the amount of full wages for the period of his suspension by adjusting the subsistence allowance. The first party management served him with a charge sheet dt. 7-7-1995 alleging that he had stolen bankers cheque leaves, prepared false vouchers, forged signatures in the seven transactions and committed a fraud to the extent of Rs. 4,66,000. The first party management conducted disciplinary proceeding on the similar charges levelled against him in the criminal case pending before Metropolitan Magistrate Court. Though the second party requested to stay the inquiry proceeding till the decision of criminal court, the inquiry officer proceeded with the inquiry proceeding. Both the proceedings proceeded simultaneously. The first party management did not allow the second party workman to engage an advocate. Inspite of the request of second party, the first party did not produce the original documents in the inquiry proceedings. Inquiry Officer has violated the Principles of Natural Justice. The charge sheet was not accompanied with documents, list of witnesses. The documents were not duly proved. No documentary or oral evidence was duly taken on record. No witness was offered for cross examination. The inquiry proceedings contain only conversion between the parties present in the inquiry.

3. The disciplinary authority had agreed with so called findings of IO and issued show cause notice dt. 23-10-1999 asking the second party workman to show cause as to why punishment of dismissal should not be imposed against him. The second party workman requested no to impose such a punishment as it was not all warranted. There was violation of principles of natural justice. Inspite of that the management dismissed the second party from the service. The appellate authority rejected the appeal of the second party. The Metropolitan Magistrate Ballard Pier Mumbai acquitted the second party workman of the charges under Sec. 381, 467, 468, 471, 421 r/w 120 (b) r/w 34 IPC. The first party management did not give any weightage to the order or MM. Therefore second party has raised industrial dispute for reinstatement. As conciliation failed, on the report of ALC ©, the reference was sent to this Tribunal. The workman therefore prays that the order of his dismissal be set aside and he be reinstated in the service with full back wages w.e.f. 13-11-1999.

4. The first party management resisted the statement of claim vide their written statement at Ex-6. According to them the second party workman while working in Foreign Bills Department at Main Office, Mumbai committed certain serious acts of misconducts of criminal nature and Bank had filed FIR with the Police and he was arrested and detained by the Police. Bank suspended and initiated inquiry against him. The management was waiting for 3 years for conclusion of criminal trial. However as trial was not even commenced within three years, they appointed inquiry officer and inquiry was proceeded with. The charge sheet was served on the second party. He filed his reply. The inquiry officer allowed him to be represented by defence representative of his choice. Accordingly the second party workman has appointed Mr. Joshi as his defence representative. The copies of documents and papers were given to the workman. As the original documents were lying in the criminal case, they could not be produced in the inquiry proceedings. However certified copies of the said original documents were produced on record. As the entire case was based on documentary evidence, the first party did not lead any oral evidence. Sufficient opportunity was given to the workman to defend himself through his defence representative.

5. The inquiry was concluded. The Inquiry Officer found the charges of theft of cheque leaves and fraud proved against the second party causing loss to the Bank to the tune of Rs. 4,66,000. The IO has submitted his report and findings to the management. Management sent the copy with show cause notice to the workman. The workman submitted his say to it. Hearing was given to the workman. However as charges against the workman were found very serious, the management found it fit to dismiss the workman from the service. According the disciplinary authority vide their order dt. 13-11-1999 dismissed the workman from service. His review application so also appeal came to be turned down. According to them the inquiry was fair, just and proper. The findings of the IO are not perverse. Therefore they pray that the reference be dismissed with cost.

6. Following are the issues for any determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Is inquiry fair and proper ?	Yes
2.	Is findings perverse ?	No

REASONS

Issue No. 1 :

7. The second party has challenged the inquiry on the ground that the first party and the inquiry officer has not stayed the inquiry proceeding till decision of the criminal case pending against him in the Court of Metropolitan Magistrate. The second party has also challenged the inquiry on the ground that, there was violation of principles of natural justice as no witness was offered for cross examination. In this respect the fact is not disputed that the management has not examined any witness in the departmental inquiry. Therefore question of offering the witness for cross examination does not arise. In respect of stay to the inquiry proceedings till the decision of the criminal case, Ld. Adv. for the first party submitted that the inquiry proceeding has no concern with the criminal case as standard of proof is altogether different in the criminal case where the charges are required to be proved beyond reasonable doubt, whereas in a departmental inquiry preponderance of probability suffice the purpose. In support of his argument, the Ld. Adv. for the first party resorted to Apex Court ruling in Noida Enterprises Assm. V/s. Noida & Ors. wherein the Hon'ble Court observed that :

> "The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings, the same does not bar departmental proceedings."

8. In the light of the observation of Hon'ble Apex Court the ld. Adv. rightly submitted that, in the light of difference in standard of proof, departmental inquiry need not be stayed during pendency of the criminal case. Thus the point raised on behalf of the second party is devoid of merit that departmental inquiry was required to be stayed till the decision of the criminal case.

9. In this respect the ld. Adv. for the first party further submitted that the second party workman has admitted in his cross at Ex-13 that, he had received the charge sheet dt. 7-7-1995. He also admitted that the copy of the charge sheet on record at Ex-15 is the same. He also admitted in his cross that Mr. A. V. Joshi a Clerk in Mandvi Branch was his defence representative. He also admitted in his cross that copies of the documents produced in inquiry proceedings were given to him. He also admitted his signatures and signatures of his defence representative on various pages of inquiry proceedings. Those pages are collectively exhibited as Ex-16. He has also admitted in his cross that copy of inquiry report was given to him and opportunity was also given to him to file his say on the inquiry report and findings thereon. He further admitted in his cross that before passing the order of dismissal the disciplinary authority had given him an opportunity of hearing and thereafter he was dismissed. He had also filed review petition and the same was rejected. In this respect the ld. Adv. for the first party submitted that the Inquiry Officer is no more and the other witness also could not be traced out. He submitted that the matter is very old. The inquiry started in the year 1996 and was concluded in the year 1999. Most of the officers are retired. Some have expired. Therefore, it is practically impossible to examine either the IO or any other officer and the matter has to be decided on the basis of the documentary evidence on record. The documents on record especially the pages of Inquiry proceedings were admitted by second party witness in his cross examination and they are exhibited. In short there is no violation of principles of natural justice. The IO has followed due procedure while conducting the inquiry. The copies of all the papers on which the management relied were given to the workmen and fair and proper opportunity was given to the workman to defend himself in the inquiry proceedings. In the circumstances, I hold that the inquiry was fair and proper. Accordingly I decide this issue no. 1 in the affirmative.

Issue No. 2 :

10. The Inquiry Officer has recorded the findings in the light of evidence on record. Most of the evidence on record are documentary evidence. He recorded findings consistent with the evidence on record. There is no anomaly or discrepancy in the facts and circumstances on record. They are quite consistent with the findings of the IO. Therefore I hold that the findings of the IO cannot be called perverse. They are quite just and proper. In the circumstances, it needs no more discussion to record the negative findings on this issue no. 2. Accordingly I hold that findings of the Inquiry Officer are not perverse. Thus I decide the issue no. 2 in the negative. In the light of above discussions I hold that inquiry is fair and proper and findings of the IO are not perverse. I direct the parties to proceed with the remaining issues in respect of punishment. Thus the order.

ORDER

The inquiry is held fair and proper and findings of Inquiry Officer are found not to be perverse. The parties to proceed with the remaining issues of punishment. Parties to remain present before this Tribunal on 7-2-2013 for hearing on the point of quantum of punishment.

Date : 8-11-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2013

का. आ. 393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आई सी आई सी आई प्रुडेनशियल लाईफ एन्श्योरेंश कम्पनी लिमिटेड (मुम्बई) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 61/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-1-2013 को प्राप्त हुआ था ।

[सं. एल-17012/18/2009-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 17th January, 2013

S.O. 393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2010) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s ICICI Prudential Life Insurance Company Ltd., (Mumbai) and their workman, which was received by the Central Government on 3-1-2013.

[No. L-17012/18/2009-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 61 of 2010

BETWEEN

Sri Chabi Nath Bharti,
S/o. Late Sri Mahabir Prasad,
33 Village Awadheshpur,
P.O. Handawan,
District—Varanasi.

AND

The Managing Director,
M/s ICICI Prudential Life Insurance Company Limited, ICICI Profile Tower,
1089 Appa Saheb Martha Marg,
Prabha Devi,
Mumbai-400025.

AWARD

1. Central Government, MoI, New Delhi, vide notification No. L-17012/18/2009-IR (M) dated 28-6-2010 has referred the following dispute for adjunction to this tribunal.

2. Whether Sri Chhabi Nathi Bharti, Unit Manager in ICICI Prudential Life Insurance Company Ltd. Jaunpur is a workman as defined under the I.D. Act, 1947 ?

3. If so, whether the action of the management of M/s ICICI Prudential Life Insurance Company Ltd., in terminating the services of Sri Chhabi Nath Bharti w.e.f. 25-2-2009 justified ? What relief the workman concerned is entitled to and from which date ?

4. In the above case after the receipt of the reference order by the appropriate government registered notices were issued to the contesting parties from the tribunal for filing their respective claims by the contesting parties. The instant case was taken up for hearing on 15-9-10, 18-11-2010, and on 13-12-2010 respectively, but neither the workman nor any one on his behalf appeared in the case to contest the case nor was any statement of claim filed on his behalf.

5. It is the workman who is claimant in the instant case is heavily burdened to contest his case before the tribunal and if he fails to file his complaint or statement of claim before the tribunal he is solely responsible for the same and he cannot be allowed to get any relief for his own deliberate lapses as has been found in the instant case.

6. Since the claimant has not availed the opportunity granted by the tribunal and also since he deliberately failed to file his claim before the tribunal, the tribunal is inclined to believe that the claimant is not interested to prosecute his case before the tribunal and the reference is bound to be answered against the claimant for want of pleadings and proof.

7. Accordingly, reference is answered in affirmative in favour of the opposite party management and against the workman.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्ष्मी विलास बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 61/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/174/2003-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2003)

of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the management of Lakshmi Vilas Bank Ltd. and their workman, which was received by the Central Government on 21-1-2013.

[No. L-12012/174/2003-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/61 of 2003

Employers in Relation to the management of Lakshmi Vilas Bank Limited.

The Assistant General Manager,
Lakshmi Vilas Bank Ltd.,
Personnel Department,
Administrative Office,
Post Box No. 2,
Salem Road,
Kathaparai,
Karur-639 006.

AND

Their workman.

Shri Bollu Sanjeeva
92/11, Shastri Nagar,
Pant Nagar.
Ghatkopar (E),
Mumbai-400 077.

APPEARANCES :

For the Employer : Mr. Tariq Baig, Advocate

For the Workman : Mr. J. H. Sawant, Advocate

AWARD

Mumbai, the 10th October, 2012

The Government of India, Ministry of Labour and Employment by its Order No. L-12012/174/2003-IR (B-I), dated 12-9-2003 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Laxmi Vilas Bank Ltd. in terminating the services of Shri Bollu Sanjeeva w.e.f. 13-6-2001 is justified ? If not, what relief the workman, Shri Bollu Sanjeeva is entitled to ?"

2. After receipt of reference both the parties were served with the notices. They appeared through their legal representatives. The second party workman filed his statement of claim at Ex-6. According to him the first party management employed him as a Peon since 15-1-1996. He was in continuous employment of the Bank. He was attending the work of permanent nature. He was employed on full time basis and was entitled to be made permanent with all consequential benefits of permanency. The workman was paid very less amount of wages and he was deprived of his rights and benefits to which he was entitled under various social and labour welfare legislations. The workman was paid wages directly by the management. Though he was working for a full month, they used to pay him wages only for 15 days in a month in order to deprive him of his legitimate rights and benefits. The workman was not attending the work against any leave vacancy. On the other hand he was attending the work regularly and was doing the work of sub-staff employee.

3. On 13-6-2001 by way of victimisation the management has illegally terminated the services of the workman. They did not follow the provisions of Section 25 F of I. D. Act, 1947. The said action of the management is illegal and unjustified. Therefore the workman has raided industrial dispute. As conciliation failed as per the report of the ALC (C), the Ministry of Labour and Employment sent the reference to this Tribunal. The workman therefore prays that the action of management terminating his services be declared as illegal and unjustified and he be reinstated in the service as a permanent employee since 13-6-2001 with full back-wages and all consequential benefits.

4. The first party resisted the claim vide its Written Statement at Ex-12. They denied the allegation that they have employed the workman on full time basis. They denied that they have illegally terminated the services of the workman. According to them, the workman was not employed by them against clear vacancy. He was engaged in leave vacancy of sub-staffs as and when required for and they used to pay him the wages as per the work he had performed. As per the agreement with the union they have prepared list of such casual workers and they were allowed to appear for the recruitment test. Accordingly, workman was allowed to appear for the selection process on 25-5-2002. However, he was not selected. He has crossed the age of 27 years on 11-6-2001. Therefore, as per the agreement with the union, Bank has not engaged him thereafter. The workman has never worked for 240 days in a calendar year. He has worked for 174 days in the year 1999, 180 days in the year 2000 and 76 days in the year 2001. In the circumstances, the management contended that neither workman was employed continuously nor he has worked continuously for 240 days in a calendar year and he was also not selected in the selection process of sub-staff. Therefore, workman has raised this false dispute.

Therefore they pray that the reference be dismissed with cost.

5. Following are the issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Whether second party proves that he was appointed on regular basis ?	No
2.	Does he prove that he completed 240 days to claim permanency ?	Yes
3.	Does he prove thast he was illegally terminated ?	Yes
4.	Is he entitled for reinstatement ?	Yes
5.	Is he entitled for other reliefs ?	20% back wages
6.	What order ?	As per order below

REASONS

Issue No. 1 :

6. In the case at hand the workman claims that he was appointed as a Peon from 15-1-1996 and was in the employment of the first party continuously till 13-6-2001. As against this it is the case of the management that the second party workman was never appointed by them on regular basis. On the other hand according to them the second party was engaged in leave period whenever permanent Peon used to be on leave or absent or any other reason. They have denied that the workman was in continuous service of the Bank. They have also denied that workman has worked continuously for more than 240 days in any calendar year. According to the first party there was agreement of the Bank with recognised union. As per the agreement the persons engaged on daily wage basis were to be called for interview for selection to the permanent post. On finding suitability for recruitment of sub staff such candidate is appointed as sub staff and such candidates are empanelled till completion of 27 years of age. On completion of 27 years of age name of such candidate used to be removed from the panel. In the year 2001 the second party workman was called for interview for selection to the post of sub staff. However he failed in the interview. Therefore he could not be appointd to the post of sub staff. According to them he had never worked continuously. Neither he was selected for the post nor completed 240 days service in a calendar year. As he had completed 27 years of age in June 2001 he was asked not to attend the work of the first party. According to the management the workman has concealed these facts from the Tribunal. Therefore he is not entitled to get any relief. In this respect the Ld. Adv. for the second party submitted that the workman was not engaged in leave vacancy as a badli Peon. On the other hand he was working continuously since 1996 upto 2001.

7. The second party workman has also admitted in his cross at Ex-18 that he was called for interview in 2001 as he was in the list of casual employees' panel. He also admitted that there was interview. He further says that he cannot say whether he failed in the interview, therefore he was not made permanent. From these admissions and facts and circumstances on record it is clear that the second party workman was not appointed on regular basis, but he was casual worker. Accordingly I decide this issue No. 1 in the negative.

Issue No. 2 :

8. The casual worker or a daily wager can be made permanent if he works for 240 days continuously in a calendar year. According to the first party, the second party workman was a mere casual substitute Peon and used to be engaged in the leave vacancy of regular Peons. Whereas it is the case of the second party workman that he was not a substitute used to be engaged in leave vacancy. On the other hand according to him he had worked continuously for more than 240 days in a calendar year. According to him he had worked from 1996 upto 2001. The Ld. adv. pointed out that the witness of first party has admitted in his cross at Ex-22 that the wages of second party were paid to him by crediting the amount of his wages in his savings Bank account every month. From the statement of account it can be verified whether the second party was getting the amount of wages every month to ascertain as to whether he was working for every month without any gap. The second party workman has produced on record the statement of accounts for the period Sept. 1998 to Sept. 2002 indicating that he was getting monthly salary from September 1998 upto May 2001. In this respect I would like to point out that, neither first party has disputed this statement of accounts and entries therein nor they have produced the statement of account of the workman for relevant years. Therefore the statement of account produced on record by the second party can very well be read in evidence and the same is thus exhibited as Ex-26. As per the statement of account (Ex-26), workman B. Sanjeeva was receiving salary from September 1998 upto May 2001. His salary used to be credited in his Savings Bank account maintained by the first party as reflected in the statement of account Ex-26. From this statement of account Ex-26, it is clear that the second party workman worked continuously from September 1998 to May 2001 and was receiving salary every month. The statement of account (Ex-26) supports the version of the second party workman that he has worked continuously for more than 240 days in a calendar year. Accordingly I decide this issue no. 2 in the affirmative.

Issue Nos. 3, 4 & 5 :

9. As discussed and decided in issue no. 2 herein above the workman was working continuously for more than 240 days in a calendar year. On the point Ld. adv. for the second party submitted that the workman was entitled to be regularised in service. Instead of regularising his services, in June 2001 the workman was asked not to come for work as he has completed 27 years of age. In this respect the Ld. adv. for the first party submitted that mere completion of 240 days service in a calendar year itself is not sufficient to claim permanency in the post unless there is permanent post duly approved by the competent authority is vacant. In support of his argument, the Ld. adv. resorted to Bombay High Court ruling in State of Maharashtra, Sub Divisional Forest Officer, Beed. V/s. Sadashiv Maroti Doke and Anr. 2011 I CLR 98 wherein the Hon'ble Court observed that :

> "Daily wagers have no right to claim reinstatement, continuity in service or back-wages unless such a permanent post duly approved by competent authority is vacant and the claimant is duly eligible for being appointed in such posts."

10. In this respect the fact is not disputed that in the case at hand, there were vacancies of sub staff. Even the second party workman was also called for interview along with some others to fill up those vacancies. However it is the case of the first party that as the workman failed in the interview, thus he could not be appointed as a regular sub staff. In this respect the Ld. Adv. rightly argued that the workman had worked as peon for few years as like regular worker. No fault was found in his work. He was otherwise found quite fit and competent for the post, therefore he was called for the interview. He further submitted that the interview seems to be mere farce in order to eliminate him. In short there was clear vacancy. Thus the ratio laid down in this ruling is not attracted to the set of facts of the present case.

11. On the point the Ld. adv. for the first party further submitted that, provisions of Section 25 F of the Industrial Disputes Act would not be attracted as the workman was daily wager and it was not the retrenchment. In support of his argument, the Ld. adv. for the first part resorted to Delhi High Court ruling in Surjeet Kumar V/s. Presiding Officer, Labour Court and ors 2007 II CLR 519 wherein the Hon'ble Court observed that :

> "A contract for temporary employment for a fixed term such workman is not entitled to protection of Section 25 F of the Act."

In the case at hand the workman was not engaged for a fixed term as in the case cited above. On the other hand the workman was working continuously for 4/5 years. According to him he was working from 1996 upto 2001. As per Statement of account Ex-26, he received monthly salary from Sept. 1998 upto May 2001. Even according to the first party the second party was discontinued from service as he has completed 27 years of age. In short he was not engaged for fixed term. Therefore, the ratio laid down in the above ruling is also not attracted to the set of facts of the case at hand.

12. The Ld. adv. further submitted that the provisions of Section 25 of I.D. Act are not attracted to the daily wager whose service is terminated. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Agnala Co-op Sugar Mills Ltd. V/s. Sukhraj Singh 2007 II CLR 525 wherein the Hon'ble Court observed that :

> "Since it is only a seasonal work it does not seems to be a case of retrenchment."

In the case at hand from the facts on record it is clear that, the workman herein was neither engaged for seasonal work nor working as a substitute or for a fixed term. On the other hand he was working as a peon continuously for more than 4 years. Therefore ratio laid down in the above ruling is not attracted to this case.

13. The Ld. Adv. also restored to Apex Court ruling in Punjab State Electricity Board & Anr V/s. Sudesh Kumar Puri 2007 II CLR 232 wherein the Hon'ble Court in respect of termination of services of meter readers held that there was agreement governing their engagement, the payments were made to them per meter reading at fixed rate. No regular employment was afforded to these meter readers, provisions of Section 2 (oo) (bb) clearly applies to the facts herein. Their engagement were dispensed with appointment with regular meter readers, Section 25 F of I.D. Act has no application. In that case also the meter readers were not engaged regularly. They were paid per meter reading at a fixed rate. In short their job was fixed term contract. Therefore ratio laid down in the said ruling is also not attracted to the set of facts of the present case as the workman herein was not given and fixed work at the fixed rate. On the other hand he was working on per day basis.

14. Ld. adv. also resorted to another Apex Court ruling in Bank of India & Anr. V/s. Tarun K. R. Biswas & Anr. (2007) 7 SCC 114 wherein the Hon'ble Court held that, badli workmen not entitled to claim reinstatement as he has not completed 240 days of work continuously. In the case at hand, the workman herein has completed more than 240 days in a calendar year. Therefore ratio laid down in this ruling is not attracted to the set of facts of the present case.

15. In this respect the Ld. adv. for the first party submitted that the workman cannot be reinstated or regularised in the service as he was not appointed by following the procedure prescribed therefor. He further submitted that in case he is regularised it would amount to back door entry, which is not allowed. According to him

long service of an ad hoc employee does not acquire any right to permanent appointment. Such an appointment would amount to perpetuating an illegality. In support of his argument, the Ld. Adv. resorted to the land mark ruling in Secretary, State of Karnataka & Ors. V/s. Uma Devi & Ors. 2006 II CLR 261 wherein the Hon'ble Apex Court observed that :

> "Unless the appointment was in terms of relevant rules, no rights are conferred on the appointee."
>
> The Hon'ble Court further observed that :
>
> "Contractual agreement comes to an end at the end of the contract."
>
> The Hon'ble Court in this judgement also held that,
>
> "Temporary employees cannot claim to be made permanent on expiry of the term of appointment merely because he is continued beyond his term of his appointment. It does not entitle to be absorbed in regular service or made permanent."

16. In this respect the Ld. adv. for the second party has rightly submitted that, the workman here in was not appointed for fixed period and the facts of this case are different thus ratio there in not applicable to the case at hand. He further rightly submitted that, various enactments are made for the welfare of labourers and workmen with intention to stop the exploitation poor workers. Inspite of that the exploitation of poor class is going on under the garb of contract labourers or daily wagers etc. He pointed out that the workmen are working continuously for number of years. They are doing the work of perennial nature along with permanent employees. The Ld. Adv. further submitted that in the light of globalization of welfare of the workmen and various labour welfare legislations recently the Hon'ble Apex Court has given due consideration to the labour welfare and has taken cognizance of the exploitation of the oppressed class, under the garb of daily wagers or contract labourers. In the recent judgement in Bhilwara Dugdh Utpadak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 wherein, the Hon'ble Apex Court in respect of exploitation in the name of so called contract labourers or daily wagers observed that :

> "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statue employers are every often resorting to subterfuge by trying to show that their employees are infact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/ workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/ workmen of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."
>
> The Hon'ble Court further observed that :
>
> "This Court cannot countenance such practices anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

17. The ratio laid down by Hon'ble Apex Court in this recent ruling, is squarely attracted to the set of the case at hand. On the other hand the above rulings cited on behalf of the first party are not attracted to the set of facts of the present case. It is contended by the workman that he is working with the first party since 15-1-1996 as a Peon. According to him though he is doing work continuously for number of years, the management refused to make him permanent. According to the workman he had worked more than 240 days continuously thus he is entitled to be made permanent.

18. In the above ruling the Hon'ble Apex Court has taken cognisance of such type of exploitation. These workmen are working for years together for minimum wages which are not sufficient even to meet the two ends of their respective families, whereas the permanent employees doing the same work get much more pay, allowances and other facilities from the department. In the light of the resent view of the Hon'ble Apex Court all the Courts and Tribunals are duty bound to look into the matters carefully and to take appropriate action to stop the exploitation of poor class of the society, who are struggling to meet the two ends of their respective families. In this backdrop, as workman is an employee of the first party he deserves to be regularised in service from the date of completion of two years which can be treated as period of his probation. In short, he should be made permanent from January, 1998 with all benefits as like the permanent employee till the date of his termination 13-6-2001.

19. In respect of back wages the Ld. adv. for the first party submitted that it is well established principle that no back wages can be awarded for the period when the workman has not worked at all. I do agree with the principle. However in the case at hand the workman has not stopped or given away his job at his own. On the other hand he was not made permanent. When he had worked for number of years and till the date of his age bar he was entitled for permanency and question of refusing to make him permanent by saying that he failed in the

interview does not arise. In this back drop as workman has not refused to join his duty and he was asked not to come for work, in a way he is entitled to full back wages. However it is a fact that since June 2001 the workman has not worked for the first party and he must be doing some work to maintain himself and family. He must be earning at least some meagre amount. In this back drop to meet the ends of justice I think it proper to direct the first party to reinstate the workman with 20% back wages. Accordingly I decide the issue nos. 3 & 4 in the affirmative. In respect of issue no. 5, I hold that the workman is entitled to the relief of 20% back wages and proceed to pass the following order :

ORDER

The Reference is allowed as follows with no order as to cost :

(1) The first party management is directed to reinstate the workman as a Peon from January 1998 as a permanent servant.

(2) The management is also directed to pay him the difference from January 1998 till 13-6-2001.

(3) The management is also directed to pay 20% back wages from 14-6-2001 till the date of his reinstatement in the service.

(4) The management is also directed to release and pay all the consequential benefits to the workman.

Date : 10-10-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्ष्मी विलास बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 62/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं एल-12012/175/2003-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the management of Lakshmi Vilas Bank Ltd. and their workmen, received by the Central Government on 21-1-2013.

[No. L-12012/175/2003-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/62 of 2003

Employers in Relation to the management of Lakshmi Vilas Bank Limited

The Assistant General Manager
Lakshmi Vilas Bank Ltd.,
Personnel Department,
Administrative Office,
Post Box No. 2,
Salem Road,
Kathaparai,
Karur-639 006.

And

Their workman.

Shri B. Shankaraiah
92/11, Shastri Nagar,
Pant Nagar,
Ghatkopar,
Mumbai-400 077.

APPEARANCES :

For the Employer : Mr. Tariq Baig, Advocate

For the Workman : Mr. J. H. Sawant, Advocate

Mumbai, dated the 10th October, 2012

AWARD

The Government of India, Ministry of Labour and Employment by its Order No. L-12012/175/2003-IR (B-I), dated 12-9-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Laxmi Vilas Bank Ltd. in terminating the services of Shri B. Shankaraiah w.e.f. 18-4-2000 is justified ? If not, what relief the workman, Shri B. Shankaraiah is entitled to ?"

2. After receipt of reference both the parties were served with the notices. They appeared through their legal representatives. The second party workman filed his statement of claim at Ex-6. According to him the first party management employed him as a Peon since 21-3-1996. He was in continuous employment of the Bank. He was attending the work of permanent nature. He was employed on full time basis and was entitled to be made permanent with all consequential benefits of permanency. The workman was paid very less amount of wages and he was

deprived of his rights and benefits to which he was entitled under various social and labour welfare legislations. The workman was paid wages directly by the management. Though he was working for a full month, they used to pay him wages only for 15 days in a month in order to deprive him of his legitimate rights and benefits. The workman was not attending the work against any leave vacancy. On the other hand he was attending the work regularly and was doing the work of sub staff employee.

3. On 18-4-2000 by way of victimisation the management has illegally terminated the services of the workman. They did not follow the provisions of Section 25 F of I. D. Act, 1947. The said action of the management is illegal and unjustified. Therefore the workman has raided industrial dispute. As conciliation failed as per the report of the ALC (C), the Ministry of Labour and Employment sent the reference to this Tribunal. The workman therefore prays that the action of management terminating his services be declared as illegal and unjustified and he be reinstated in the service as a permanent employee since 18-4-2000 with full back-wages and all consequential benefits.

4. The first party resisted the claim vide its Written Statement at Ex-10. They denied the allegation that they have employed the workman on full time basis. They denied that they have illegally terminated the services of the workman. According to them, the workman was not employed by them against clear vacancy. He was engaged in leave vacancy of sub staffs as and when required for and they used to pay him the wages as per the work he had performed. As per the agreement with the union they have prepared list of such casual workers and they were allowed to appear for the recruitment test. Accordingly workman was allowed to appear for the selection process on 25-5-2002. However he was not selected. He has crossed the age of 27 years on 17-4-2000. Therefore as per the agreement with the union, Bank has not engaged him thereafter. The workman has never worked for 240 days in a calendar year. In the circumstances, the management contended that neither workman was employed continuously nor he has worked continuously for 240 days in a calendar year and he was also not selected in the selection process of sub staff. Therefore workman has raised this false dispute. Therefore they pray that the reference be dismissed with cost.

5. Following are the issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Whether second party proves that he was appointed on regular basis ?	No
2.	Does he prove that he completed 240 days to claim permanency ?	Yes
3.	Does he prove thast he was illegally terminated ?	Yes
4.	Is he entitled for reinstatement ?	Yes
5.	Is he entitled for other reliefs ?	20% back wages
6.	What order ?	As per order below

REASONS

Issue No. 1 :

6. In the case at hand the workman claims that he was appointed as a Peon from 21-3-1996 and was in the employment of the first party continuously till 18-4-2000. As against this it is the case of the management that the second party workman was never appointed by them on regular basis. On the other hand according to them the second party was engaged in leave period whenever permanent Peon used to be on leave or absent or any other reason. They have denied that the workman was in continuous service of the Bank. They have also denied that workman has worked continuously for more than 240 days in any calendar year. According to the first party there was agreement of the Bank with recognised union. As per the agreement the persons engaged on daily wage basis were to be called for interview for selection to the permanent post. On finding suitability for recruitment of sub staff such candidate is appointed as sub staff and such candidates are empanelled till completion of 27 years of age. On completion of 27 years of age name of such candidate used to be removed from the panel. In the year 2002 the second party workman was called for interview for selection to the post of sub staff. However he failed in the interview. Therefore he could not be appointed to the post of sub staff. According to them he had never worked continuously. Neither he was selected for the post nor completed 240 days service in a calendar year. As he had completed 27 years of age in April 2000 he was asked not to attend the work of the first party. According to the management the workman has concealed these facts from the Tribunal. Therefore he is not entitled to get any relief. In this respect the Ld. Adv. for the second party submitted that the workman was not engaged in leave vacancy as a badli Peon. On the other hand he was working continuously since 1996 upto 2000.

7. The second party workman has also admitted in his cross at Ex-14 that he was called for interview in 2002 as he was in the list of casual employees' panel. He also admitted that there was interview. He further says that he cannot say whether he failed in the interview, therefore he was not made permanent. From these admissions and facts

and circumstances on record it is clear that the second party workman was not appointed on regular basis, but he was casual worker. Accordingly I decide this issue No. 1 in the negative.

Issue No. 2 :

8. The casual worker or a daily wager can be made permanent if he works for 240 days continuously in a calendar year. According to the first party, the second party workman was a mere casual substitute Peon and used to be engaged in the leave vacancy of regular Peons. Whereas it is the case of the second party workman that he was not a substitute used to be engaged in leave vacancy. On the other hand according to him he had worked continuously for more than 240 days in a calendar year. According to him he had worked from 1996 upto 2000. The ld. adv. pointed out that the witness of first party has admitted in his cross at Ex-17 that the wages of second party were paid to him by crediting the amount of his wages in his savings bank account every month. From the statement of account Tribunal could have verified whether the second party was getting the amount of wages every month. The first party is expected to have the statement of account with them. They have not produced the same to ascertain as to whether he was working for every month without any gap. As first party has not produced the documents in their possession, adverse inference can safely be drawn against them. In Ref. CGIT-2/59/2003 and Ref. CGIT-2/61/2003 the second parties therein have produced copies of bank pass book and statement of account respectively to show that they have been receiving pay every month continuously. The same type of payment must have been received by the second party in this case also. Therefore the version of the second party can safely be accepted that he was working from March 1996 to April 2000 continuously. In short he had worked for more than 240 days in a calendar year and entitled to the protection under Section 25 F of the I. D. Act. Accordingly, I decide this issue no. 2 in the affirmative.

Issue Nos. 3, 4 and 5 :

9. As discussed and decided in issue no. 2 herein-above the workman was working continuously for more than 240 days in a calendar year. On the point ld. adv. for the second party submitted that the workman was entitled to be regularised in service. Instead of regularising his services, in April 2000 the workman was asked not to come for work as he has completed 27 years of age. In this respect the ld. adv for the first party submitted that mere completion of 240 days service in a calendar year itself is not sufficient to claim permanency in the post unless there is permanent post duly approved by the competent authority is vacant. In support of his argument, the ld. adv. resorted to Bombay High Court ruling in State of Maharashtra, Sub Divisional Forest Officer, Beed. V/s. Sadashiv Maroti Doke and Anr. 2011 I CLR 98 wherein the Hon'ble Court observed that :

> "Daily wagers have no right to claim reinstatement, continuity in service or back-wages unless such a permanent post duly approved by competent authority is vacant and the claimant is duly eligible for being appointed in such posts."

10. In this respect the fact is not disputed that in the case at hand, there were vacancies of sub staff. Even the second party workman was also called for interview along with some others to fill up those vacancies. However it is the case of the first party that as the workman failed in the interview, thus he could not be appointed as a regular sub staff. In this respect the Ld. adv. rightly argued that the workman had worked as Peon for few years as like regular worker. No fault was found in his work. He was otherwise found quite fit and competent for the post, therefore he was called for the interview. He further submitted that the interview seems to be mere farce in order to eliminate him. In short there was clear vacancy. Thus the ratio laid down in this ruling is not attracted to the set of facts of the present case.

11. On the point the ld. adv. for the first party further submitted that, provisions of Section 25 F of the Industrial Disputes Act would not be attracted as the workman was daily wager and it was not the retrenchment. In support of his argument, the Ld. adv. for the first party resorted to Delhi High Court ruling in Surjeet Kumar V/s. Presiding Officer, Labour Court and ors 2007 II CLR 519 wherein the Hon'ble Court observed that :

> "A contract for temporary employment for a fixed term such workman is not entitled to protection of Section 25 F of the Act."

In the case at hand the workman was not engaged for a fixed term as in the case cited above. On the other hand the workman was working continuously for 4/5 years. According to the second party workman he had worked from March 1996 upto April 2000 and was receiving monthly salary for the said period. Even according to the first party the second party was discontinued from service as he has completed 27 years of age. In short he was not engaged for fixed term. Therefore, the ratio laid down in the above ruling is also not attracted to the set of facts of the case at hand.

12. The ld. adv. further submitted that the provisions of Section 25 of I D Act are not attracted to the daily wager whose service is terminated. In support of his argument the ld. Adv. resorted to Apex Court ruling in Agnala Co-op Sugar Mills Ltd. V/s. Sukhraj Singh 2007 II CLR 525 wherein the Hon'ble Court observed that :

> "Since it is only a seasonal work it does not seems to be a case of retrenchment."

In the case at hand from the facts on record it is clear that, the workman herein was neither engaged for seasonal work nor working as a substitute or for a fixed term. On the other hand he was working as a peon continuously for more than 4 years. Therefore ratio laid down in the above ruling is not attracted to this case.

13. The Id. Adv. also restored to Apex Court ruling in Punjab State Electricity Board & Anr V/s. Sudesh Kumar Puri 2007 II CLR 232 wherein the Hon'ble Court in respect of termination of services of meter readers held that there was agreement governing their engagement, the payments were made to them per meter reading at fixed rate. No regular employment was afforded to these meter readers, provisions of Section 2 (oo) (bb) clearly applies to the facts herein. Their engagement were dispensed with appointment with regular meter readers, Section 25 F of I.D. Act has no application. In that case also the meter readers were not engaged regularly. They were paid per meter reading at a fixed rate. In short their job was fixed term contract. Therefore ratio laid down in the said ruling is also not attracted to the set of facts of the present case as the workman herein was not given and fixed work at the fixed rate. On the other hand he was working on per day basis.

14. Ld. adv. also resorted to another Apex Court ruling in Bank of India & Anr. V/s. Tarun K. R. Biswas & Anr. (2007) 7 SCC 114 wherein the Hon'ble Court held that, badli workmen not entitled to claim reinstatement as he has not completed 240 days of work continuously. In the case at hand, the workman herein has completed more than 240 days in a calendar year. Therefore ratio laid down in this ruling is not attracted to the set of facts of the present case.

15. In this respect the Id. adv. for the first party submitted that the workman cannot be reinstated or regularised in the service as he was not appointed by following the procedure prescribed therefor. He further submitted that in case he is regularised it would amount to back door entry, which is not allowed. According to him long service of an ad hoc employee does not acquire any right to permanent appointment. Such an appointment would amount to perpetuating an illegality. In support of his argument, the Ld. Adv. resorted to the land mark ruling in Secretary, State of Karnataka & Ors. V/s. Uma Devi & Ors. 2006 II CLR 261 wherein the Hon'ble Apex Court observed that :

> "Unless the appointment was in terms of relevant rules, no rights are conferred on the appointee."

The Hon'ble Court further observed that :

> "Contractual agreement comes to an end at the end of the contract."

The Hon'ble Court in this judgement also held that

> "Temporary employees cannot claim to be made permanent on expiry of the term of appointment merely because he is continued beyond his term of his appointment. It does not entitle to be absorbed in regular service or made permanent."

16. In this respect the Id. adv. for the second party has rightly submitted that, the workman herein was not appointed for fixed period and the facts of this case are different thus ratio therein is not applicable to the case at hand. He further rightly submitted that, various enactments are made for the welfare of labourers and workmen with intention to stop the exploitation of poor workers. Inspite of that the exploitation of poor class is going on under the garb of contract labourers or daily wagers etc. He pointed out that the workmen are working continuously for number of years. They are doing the work of perennial nature along with permanent employees. The Id. Adv. further submitted that in the light of globalization of welfare of the workmen and various labour welfare legislations recently the Hon'ble Apex Court has given due consideration and has taken cognizance of the exploitation of the oppressed class, under the garb of daily wagers or contract labourers. In the recent judgement in Bhilwara Dugdh Utpadak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 wherein, the Hon'ble Apex Court in respect of exploitation in the name of so called contract labourers or daily wagers observed that :

> "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statute employers are every often resorting to subterfuge by trying to show that their employees are in fact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/ workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/ workmen of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."

The Hon'ble Court further observed that :

> "This Court cannot countenance such practices anymore. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

17. The ratio laid down by Hon'ble Apex Court in this recent ruling, is squarely attracted to the set of fact of the case at hand. On the other hand the above ruling cited on behalf of the first party are not attracted to the set of facts of the present case. It is contended by the workman that he is working with the first party since 21-3-1996 as a Peon. According to him though he is doing work continuously for number of years, the management refused to make him permanent. According to the workman he had worked more than 240 days continuously thus he is entitled to be made permanent.

18. In the above ruling the Hon'ble Apex Court has taken cognizance of such type of exploitation. These workmen are working for years together for minimum wages which are not sufficient even to meet the two ends of their respective families, whereas the permanent employees doing the same work get much more pay, allowances and other facilities from the department. In the light of the resent view of the Hon'ble Apex Court all the Courts and Tribunals are duty bound to look into the matters carefully and to take appropriate action to stop the exploitation of poor class of the society, who are struggling to meet the two ends of their respective families. In this backdrop, as workman is an employee of the first party he deserves to be regularised in service from the date of completion of two years which can be treated as period of his probation. In short, he should be made permanent from January, 1998 with all benefits as like the permanent employee till the date of his termination 18-4-2000.

19. In respect of back wages the ld. adv. for the first party submitted that it is well established principle that no back wages can be awarded for the period when the workman has not worked at all. I do agree with the principle. However in the case at hand the workman has not stopped or given away his job at his own. On the other hand he was not made permanent. When he had worked for number of yeasrs and till the date of his age bar he was entitled for permanency and question of refusing to make him permanent by saying that he failed in the interview does not arise. In this back-drop as workman has not refused to join his duty and he was asked not to come for work, in a way he is entitled to full back wages. However it is a fact that since April 2000 the workman has not worked for the first party and he must be doing some work to maintain himself and family. He must be earning at least some meagre amount. In this backdrop to meet the ends of justice I think it proper to direct the first party to reinstate the workman with 20% back wages. Accordingly I decide the issue nos. 3 & 4 in the affirmative. In respect of issue no. 5, I hold that the workman is entitled to the relief of 20% back wages and proceed to pass the following order :

ORDER

The Reference is allowed as follows with no order as to cost :

(1) The first party management is directed to reinstate the workman as a Peon from January 1998 as a permanent servant.

(2) The management is also directed to pay him the difference from January 1998 till 18-4-2000.

(3) The management is also directed to pay 20% back wages from 18-4-2000 till the date of his reinstatement in the service.

(4) The management is also directed to release and pay all the consequential benefits to the workman.

Date : 10-10-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लक्ष्मी विलास बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या 59/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-01-2013 को प्राप्त हुआ था ।

[सं. एल-12012/172/2003-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between management of Lakshmi Vilas Bank Ltd. and their workman, which was received by the Central Government on 21-01-2013.

[No. L-12012/172/2003-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/59 of 2003

Employers in relation to the Management of Lakshmi Vilas Bank Limited

The Assistant General Manager,
Lakshmi Vilas Bank Ltd.,
Personnel Department Administrative Office,
Post Box No. 2, Salem Road,
Kathaparai, Karur-639 006.

AND

Their workman

Shri Lahu Tanaji Chougule,
A Type, 22-6, Sector-13,
New Panvel, Distt. Raigad,
Maharashtra State.

APPEARANCES:

For the Employer : Mr. Tariq Baig, Advocate

For the Workman : Mr. J.H. Sawant, Advocate

Mumbai, the 10th October, 2012.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12012/172/2003-IR (B-I) dated 12-9-2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of Laxmi Vilas Bank Ltd. in terminating the services of Shri Lahu Tanaji Chougule w.e.f. 1-6-2001 is justified? If not, what relief the workman, Shri Lahu Tanaji Chougule is entitled to ?"

2. After receipt of reference both the parties were served with the notices. They appeared through their legal representatives. The second party workman filed his statement of claim at Ex.-6. According to him the first party management employed him as a Peon since 8-3-1999. He was in continuous employment of Bank. He was attending the work of permanent nature. He was employed on full time basis and was entitled to be made permanent with all consequential benefits of permanency. The workman was paid very less amount of wages and he was deprived of his rights and benefits to which he was entitled under various social and labour welfare legislations. The workman was paid wages directly by the management. Though he was working for a full month, they used to pay him wages only for 15 days in a month in order to deprive him of his legitimate rights and benefits. The workman was not attending the work against any leave vacancy. On the other hand he was attending the work regularly and was doing the work of sub staff employee.

3. On 1-6-2011 by way of victimisation the management has illegally terminated the services of the workman. They did not follow the provisions of Section 25F of I.D. Act 1947. The said action of the management is illegal and unjustified. Therefore the workman has raided industrial dispute. As conciliation failed as per the report of the ALC (C) the Ministry of Labour & Employment sent the reference to this Tribunal. The workman therefore prays that the action of management terminating his services be declared as illegal and unjustified and he be reinstated in the service as a permanent employee since 1-6-2001 with full backwages and all consequential benefits.

4. The first party resisted the claim vide its Written Statement at Ex-8. They denied the allegation that they have employed the workman on full time basis. They denied that they have illegally terminated the services of the workman. According to them, the workman was not employed by them against clear vacancy. He was engaged in leave vacancy of sub-staffs as and when required for and they used to pay him the wages as per the work he had performed. As per the agreement with the union they have prepared list of such casual workers and they were allowed to appear for the recruitment test. Accordingly workman was allowed to appear for the selection process on 25-5-2002. However he was not selected. He has crossed the age of 27 years on 31-5-2001. Therefore as per the agreement with the union, Bank has not engaged him thereafter. The workman has never worked for 240 days in a calendar year. He has worked for 135 days in the year 1999, 165 days in the year 2000 and 75 days in the year 2001. In the circumstances, the management contended that neither workman was employed continuously nor he has worked continuously for 240 days in a calendar year and he was also not selected in the selection process of sub staff. Therefore workman has raised this false dispute. Therefore they pray that the reference be dismissed with cost.

5. Following are the issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
1.	Whether second party proves that he was appointed on regular basis ?	No
2.	Does he prove that he completed 240 days to claim permanency ?	Yes
3.	Does he prove that he was illegally terminated ?	Yes
4.	Is he entitled for reinstatement ?	Yes
5.	Is he entitled for other reliefs ?	20% back wages
6.	What order ?	As per order below

REASONS

Issue No. 1 :

6. In the case at hand the workman claims that he was appointed as a Peon from 08-3-1999 and was in the employment of the first party continuously till 1-6-2001. As against this it is the case of the management that the second party workman was never appointed by them on regular basis. On the other hand according to them the second party was engaged in leave period whenever permanent Peon used to be on leave or absent or any other reason. They have denied that the workman was in continuous service of the Bank. They have also denied that workman has worked continuously for more than 240 days in any calendar year. According to the first party there was agreement of the Bank with recognised union. As per the agreement the persons engaged on daily wage basis were to be called for interview for selection to the permanent post. On finding suitability for recruitment of sub staff such candidate is appointed as sub-staff and such candidates are empanelled till completion of 27 years of age. On completion of 27 years of age name of such candidate used to be removed from the panel. In the year 2001 the second party workman was called for interview for selection to the post of sub staff. However he failed in the interview. Therefore he could not be appointed to the post of sub staff. According to them he had never worked continuously. Neither he was selected for the post nor completed 240 days service in a calendar year. As he had completed 27 years of age in June 2001 he was asked not to attend the work of the first party. According to the management the workman has concealed these facts from the Tribunal. Therefore he is not entitled to get any relief. In this respect the Ld. Adv. for the second party submitted that the workman was not engaged in leave vacancy as a badli Peon. On the other hand he was working continuously since 1999 upto 2001.

7. The second party workman has also admitted in his cross at Ex-18 that he was called for interview in 2001 as he was in the list of casual employees' panel. He also admitted that there was interview. He further says that he cannot say whether he failed in the interview, therefore he was not made permanent. From these admissions and facts and circumstances on record it is clear that the second party workman was not appointed on regular basis, but he was casual worker. Accordingly I decide this issue No. 1 in the negative.

Issue No. 2 :

8. The casual worker or a daily wager can be made permanent if he works for 240 days continuously in a calendar year. According to the first party, the second party workman was a mere casual substitute Peon and used to be engaged in the leave vacancy of regular Peons. Whereas it is the case of the second party workman that he was not a substitute used to be engaged in leave vacancy. On the other hand according to him he had worked continuously for more than 240 days in a calendar year. According to him he had worked from 1999 upto 2001. The Ld. Adv. pointed out that the witness of first party has admitted in his cross at Ex-22 that the wages of second party were paid to him by crediting the amount of his wages in his savings Bank account every month. From the statement of account it can be verified whether the second party was getting the amount of wages every month to ascertain as to whether he was working for every month without any gap. The second party workman has produced on record the bank pass book for the period March 1999 to May 2001 indicating that he was getting monthly salary from March 1999 upto May 2001. It is at Ex-27. As per the bank pass book (Ex-27), workman L Ghougule was receiving salary from March 1999 upto May 2001. His salary used to be credited in his savings bank account maintained by the first party as reflected in the bank pass book Ex-27. From this bank pass book Ex-2, it is clear that the second party workman worked continuously from March 1999 to May 2001 and was receiving salary every month. The bank pass book Ex-2 supports the version of the second party workman that he has worked continuously for more than 240 days in a calendar year. Accordingly, I decide this issue no. 2 in the affirmative.

Issue Nos. 3, 4 & 5 :

9. As discussed and decided in issue no. 2 herein-above the workman was working continuously for more than 240 days in a calendar year. On the point Ld. Adv. for the second party submitted that the workman was entitled to be regularised in service. Instead of regularising his services, in June 2001 the workman was asked not to come for work as he has completed 27 years of age. In this respect the Ld. Adv. for the first party submitted that mere completion of 240 days service in a calendar year itself is not sufficient to claim permanency in the post unless there is permanent post duly approved by the competent authority is vacant. In support of his argument, the Ld. Adv. resorted to Bombay High Court ruling in State of Maharashtra, Sub Divisional Forest Officer, Beed. V/s. Sadashiv Maroti Doke and Anr. 2011 I CLR 98 wherein the Hon'ble Court observed that :

> "Daily wagers have no right to claim reinstatement, continuity in service or back-wages unless such a permanent post duly approved by competent authority is vacant and the claimant is duly eligible for being appointed in such posts."

10. In this respect the fact is not disputed that in the case at hand, there were vacancies of sub staff. Even the second party workman was also called for interview along with some others to fill up those vacancies. However it is the case of the first party that as the workman failed in the interview, thus he could not be appointed as a regular

sub-staff. In this respect the Ld. Adv. rightly argued that the workman had worked as peon for few years as like regular worker. No fault was found in his work. He was otherwise found quite fit and competent for the post, therefore he was called for the interview. He further submitted that the interview seems to be mere farce in order to eliminate him. In short there was clear vacancy. Thus the ratio laid down in this ruling is not attracted to the set of facts of the present case.

11. On the point the Ld. Adv. for the first party further submitted that, provisions of Section 25 F of the Industrial Disputes Act would not be attracted as the workman was daily wager and it was not the retrenchment. In support of his argument, the Ld. Adv. for the first part resorted to Delhi High Court ruling in Surjeet Kumar V/s. Presiding Officer, Labour Court and ors 2007 II CLR 519 wherein the Hon'ble Court observed that :

> "A contract for temporary employment for a fixed term such workman is not entitled to protection of Section 25 F of the Act."

In the case at hand the workman was not engaged for a fixed term as in the case cited above. On the other hand the workman was working continuously for 4/5 years. According to him he was working from 1996 upto 2001. As per bank pass book Ex-2, he received monthly salary from March 1999 upto May 2001. Even according to the first party the second party was discontinued from service as he has completed 27 years of age. In short he was not engaged for fixed term. Therefore, the ratio laid down in the above ruling is also not attracted to the set of facts of the case at hand.

12. The Ld. Adv. further submitted that the provisions of Section 25F of I.D. Act are not attracted to the daily wager whose service is terminated. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Agnala Co-op Sugar Mills Ltd. V/s. Sukhraj Singh 2007 II CLR 525 wherein the Hon'ble Court observed that :

> "Since it is only a seasonal work it does not seems to be a case of retrenchment."

In the case at hand from the facts on record it is clear that, the workman herein was neither engaged for seasonal work nor working as a substitute or for a fixed term. On the other hand he was working as a peon continuously for more than 3 years. Therefore ratio laid down in the above ruling is not attracted to this case.

13. The Ld. Adv. also restored to Apex Court ruling in Punjab State Electricity Board & Anr V/s. Sudesh Kumar Puri 2007 II CLR 232 wherein the Hon'ble Court in respect of termination of services of meter readers held that there was agreement governing their engagement, the payments were made to them per meter reading at fixed rate. No regular employment was afforded to these meter readers, provisions of Section 2 (oo) (bb) clearly applies to the facts herein. Their engagement were dispensed with appointment with regular meter readers, Section 25 F of I.D. Act has no application. In that case also the meter readers were not engaged regularly. They were paid per meter reading at a fixed rate. In short their job was fixed term contract. Therefore ratio laid down in the said ruling is also not attracted to the set of facts of the present case as the workman herein was not given and fixed work at the fixed rate. On the other hand he was working on per day basis.

14. Ld. Adv. also resorted to another Apex Court ruling in Bank of India & Anr. V/s. Tarun K. R. Biswas & Anr. (2007) 7 SCC 114 wherein the Hon'ble Court held that, badli workmen not entitled to claim reinstatement as he has not completed 240 days of work continuously. In the case at hand, the workman herein has completed more than 240 days in a calendar year. Therefore ratio laid down in this ruling is not attracted to the set of facts of the present case.

15. In this respect the Ld. Adv. for the first party submitted that the workman cannot be reinstated or regularised in the service as he was not appointed by following the procedure prescribed therefor. He further submitted tht in case he is regularised it would amount to back door entry, which is not allowed. According to him long service of an ad hoc employee does not acquire any right to permanent appointment. Such an appointment would amount to perpetuating an illegality. In support of his argument, the Ld. Adv. resorted to the land mark ruling in Secretary, State of Karnataka & Ors. V/s. Uma Devi & Ors. 2006 II CLR 261 wherein the Hon'ble Apex Court observed that :

> "Unless the appointment was in terms of relevant rules, no rights are conferred on the appointee."
>
> The Hon'ble Court further observed that :
>
> "Contractual agreement comes to an end at the end of the contract."
>
> The Hon'ble Court in this judgement also held that,
>
> "Temporary employees cannot claim to be made permanent on expiry of the term of appointment merely because he is continued beyond his term of his appointment. It does not entitle to be absorbed in regular service or made permanent."

16. In this respect the Ld. Adv. for the second party has rightly submitted that, the workman here in was not appointed for fixed period and the facts of this case are different thus ratio there in not applicable to the case at hand. He further rightly submitted that, various enactments are made for the welfare of labourers and workmen with intention to stop the exploitation poor workers. Inspite of that the exploitation of poor class is going on under the garb of contract labourers or daily wagers etc. He pointed out that the workmen are working continuously for number of years. They are doing the work of perennial nature along

with permanent employees. The Ld. Adv. further submitted that in the light of globalization of welfare of the workmen and various labour welfare legislations recently the Hon'ble Apex Court has given due consideration to the labour welfare and has taken cognizance of the exploitation of the oppressed class, under the garb of daily wagers or contract labourers. In the recent judgement in Bhilwara Dugdh Utpadak Sahakari S. Ltd. V/s. Vinod Kumar Sharma & Ors. 2011 III CLR 386 wherein, the Hon'ble Apex Court in respect of exploitation in the name of so called contract labourers or daily wagers observed that :

> "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liability under various labour statute employers are every often resorting to subterfuge by trying to show that their employees are infact the employees of a contractor. It is high time that this subterfuge must come to an end. Labour statutes were meant to protect the employees/ workmen because it was realised that the employer and the employees are not on an equal bargaining position. Hence protection of employees was required so that they may not be exploited. However this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/ workmen of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees."

The Hon'ble Court further observed that :

> "This Court cannot countenance such practices any more. Globalisation/liberalisation in the name of growth cannot be at the human cost of exploitation of workers."

17. The ratio laid down by Hon'ble Apex Court in this recent ruling, is squarely attracted to the set of the case at hand. On the other hand the above ruling cited on behalf of the first party are not attracted to the set of facts of the present case. It is contended by the workman that he is working with the first party since 08-3-1999 as a Peon. According to him though he is doing work continuously for number of years, the management refused to make him permanent. According to the workman he had worked more than 240 days continuously thus he is entitled to be made permanent.

18. In the above ruling the Hon'ble Apex Court has taken cognisance of such type of exploitation. These workmen are working for years together for minimum wages which are not sufficient even to meet the two ends of their respective families, whereas the permanent employees doing the same work get much more pay, allowances and other facilities from the department. In the light of the recent view of the Hon'ble Apex Court all the Courts and Tribunals are duty bound to look into the matters carefully and to take appropriate action to stop the exploitation of poor class of the society, who are struggling to meet the two ends of their respective families. In this backdrop, as workman is an employee of the first party he deserves to be regularised in service from the date of completion of two years which can be treated as period of his probation. In short, he should be made permanent from March 2001 with all benefits as like the permanent employee till the date of his termination 1-6-2001.

19. In respect of back wages the Ld. Adv. for the first party submitted that it is well established principle that no back wages can be awarded for the period when the workman has not worked at all. I do agree with the principle. However in the case at hand the workman has not stopped or given away his job at his own. On the other hand he was not made permanent. When he had worked for number of years and till the date of his age bar he was entitled for permanency and question of refusing to make him permanent by saying that he failed in the interview does not arise. In this backdrop as workman has not refused to join his duty and he was asked not to come for work, in a way he is entitled to full back wages. However it is a fact that since June 2001 the workman has not worked for the first party and he must be doing some work to maintain himself and family. He must be earning at least some meagre amount. In this backdrop to meet the ends of justice I think it proper to direct the first party to reinstate the workman with 20% back wages. Accordingly I decide the issue nos. 3 & 4 in the affirmative. In respect of issue no. 5, I hold that the workman is entitled to the relief of 20% back wages and proceed to pass the following order :

ORDER

The Reference is allowed as follows with no order as to cost :

(1) The first party management is directed to reinstate the workman as a Peon from March 2001 as a permanent servant.

(2) The management is also directed to pay him the difference from March 2001 till 1-6-2001.

(3) The management is also directed to pay 20% back wages from 1-6-2001 till the date of his reinstatement in the service.

(4) The management is also directed to release and pay all the consequential benefits to the workman.

Date : 10-10-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ त्रावनकौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अरनाकुलम के पंचाट (संदर्भ संख्या 24/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-01-2013 को प्राप्त हुआ था ।

[सं. एल-12012/25/2009-आई. आर. (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between management of State Bank of Travancor and their workmen, which was received by the Central Government on 21-01-2013.

[No. L-12012/25/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present :

Shri D. Sreevallabhan, B.Sc. LL.B., Presiding Officer

(Friday, the 28h day of September, 2012)

I.D. 24/2009

Workman	:	D. Sreedevi, Thottamkara Madam, Western Gate, Ambalapuzha P.O., Kerala, Allepey.
Management	:	The Managing Director, State Bank of Travancore, Head Office, Poojappura, Thiruvananthapuram.

By. Adv. Shri P. Ramakrishnan

This case coming up for final hearing on 28-9-2012 and this Tribunal-cum-Labour Court on the same day passed the following :

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-12012/25/2009-IR(B-I) dated 13-7-2009 referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of State Bank of Travancore in discharge to Smt. D. Sreedevi from services w.e.f. 19-4-2008 on the findings of domestic enquiry, is justified? If not, what relief the applicant is entitled to?"

2. The workman joined the services of the management bank on 18-1-1982 as a Cashier-cum-Clerk. Later she was posted as Single Window Operator. While she was working in that post in the Ambalapuzha branch of the bank the Assistant General Manager III(E)/ Disciplinary Authority of the management bank issued charge sheet dated 9-1-2007 with charges under three heads by levelling allegations as to the commission of acts of gross misconduct under Clause 5(e) and 5(j) of the Memorandum of Settlement dated 10-4-2002.

3. The charges levelled against her are under three heads.

The charge under the 1st head includes 3 items of charges of misappropriation as given below :

> "(i) On 10-5-2006, Smt. A. Rahiyanath, a customer of the Branch remitted an amount of Rs. 5,000 for credit of her Demand Loan Account No.57032613598 (old loan account No. 256) with the Branch. Though you have received the amount and entered the credit entry in the relative loan pass-book unauthorisedly and issue the counter foil of the credit voucher duly authenticated, you did not credit the amount to the loan account. On a follow up of the above customer for the amount remitted by her, you made good the amount on 23-5-06 in cash by crediting the above loan account which clearly indicated that you have misappropriated the funds remitted by the party.
>
> (ii) Again on 29-4-06, you misappropriated an amount of Rs. 2500/- remitted by M/s. Surya Kudumbasree unit to their account No. 67005013440. You received the amount but failed to account the same in the loan account and issued the pass-book with the credit entry under your initials. You credited the amount to the loan account only on 2-5-06.

(iii) Further details of your misappropriation of funds on the accounts of various borrowers/ depositors are furnished below :

Account Number	Name of the Party	Date of credit in the Pass Book	Date of credit in the Computer	Amount in Rs.
57032721900 (MTL Account)	S. Jayan	24-3-05	08-04-05	1000
		16-07-05	22-07-05	1500
		01-08-05	12-08-05	1000
		20-02-06	16-03-06	1200
		28-02-06	22-03-06	1000
		07-04-06	18-04-06	1000
		18-04-06	27-04-06	800
		26-04-06	27-04-06	750
57032690460 (SB Account)	Malavika Kudum-basree	01-02-06	11-03-06	2640
		08-04-06	17-04-06	3000
57032663005 (SB Account)	R. Suseela Devi	02-05-06	15-05-06	1000
57032617752 (MTL Account)	G Unni-krishnan	07-07-05	19-07-05	3000
		16-08-05	18-08-05	3000
		30-09-05	08-11-05	3000
		20-04-06	29-04-06	3000
57032595395 (Agri Cash Credit)	K.S. Sindhu	11-02-06	11-05-06	3500

You have received the amounts in cash on the respective dates as shown above from the above borrowers/depositors and made credit entries in the relative pass books under your initials. However, the above amounts were not credit to the respective party's account on the same day; instead you retained the amounts with you and credited the accounts on the later dates. You, thereby, misappropriated the funds remitted by the customers".

4. The charge under the 2nd head is as to the neglect to obtain signatures of the remitters on cash receipt vouchers and it is as follows :

"You neglected to obtain the signatures of the remitters on cash receipt vouchers, disregarding the extant instructions of the bank in this regard as detailed below :

(i) Account No. 57032617752, credit voucher for Rs. 3,000/- dated 8-11-2005.

(ii) Account No. 57032595395, credit voucher for Rs. 3,500/- dated 11-2-2006".

5. The charge under the 3rd head is as to the correction of dates in credit vouchers without authentication by remitters and it is as given below :

"The dates of credit vouchers are seen corrected by you in the following cases without any authentication by the remitters."

Account Number	Account of credit (Rs.)	Date in the pass book	Date in the Computer	Remarks
SB 57032690460	3000	8-4-2006	17-4-2006	Voucher date 8-4-06 Corrected as 17-4-2006
SB 57032689513	5250	3-4-2006	4-4-2006	Voucher date 3-4-06 Corrected as 4-4-2006
SB 57032663005	1000	2-5-2006	15-5-2006	Voucher date 2-5-06 Corrected as 15-5-2006
MTL 57032620301	5000	28-4-2006	29-4-2006	Voucher date 28-4-06 Corrected as 29-4-2006

6. The workman who was placed under suspension submitted her explanation without disputing the said acts but explaining the circumstances to justify her actions. As far as item No. 1 under the first head is concerned, her explanation is that there was only one Single Window Operator on most of the days in the bank and it was because of her eagerness to quickly dispose of the customers without causing any inconvenience to them the amount was received after making entry in the pass book after signing the counter foil. The amount was found to be less and hence returned to her. If any difference is seen in the remittance later the customer would be contacted over telephone and the difference be rectified. It is the regular practice in all the branches of the bank. The shortage was noticed when the remittance was examined before entering in the system. She was informed of it. She came with the full amount on 25-3-2006 and hence the remittance was happened to be recorded later.

7. As to item No. 2 under the first head the explanation is that the failure to credit the amount remitted by Kudumbasree unit is because of the reason that the account number was not seen clearly on the voucher. The party was informed of it on that day and correct account number was brought on the next working day i.e. on 2-5-2006. Hence the amount was credited on that day.

8. Her explanation as to item No. 3 is that all the transactions under that item are of the above nature and it is usual for the customers in rural areas to hand over cash for remittance to staff members even at their residence or on their way to the bank and in many of such cases the customers may not even correctly remember the dates or the account numbers. She did not unauthorisedly retained any amount of the customers and never made any false entry with fraudulent intent. There was no occasion of misappropriation of any amount of the customers by her.

9. As to charge No. 2 her explanation is that in a busy counter it is at times not possible to be very bureaucratic with the customers if they have already left. It is a matter of daily business and trust with the customers in the interest of good service. Even if there was non obtaining of signature it was due to mere oversight and not due to any malafide intent.

10. Regarding charge No. 3 her explanation is that the date might have been corrected if it was wrong and it might also be under the above said circumstances.

11. According to her she has not indulged in any major misconduct and the acts done in the interest of good customer service had been twisted and fraudulent aspersions were casted upon. All the charges are baseless and hence denied. Hence she has to be exonerated from the charges levelled against her.

12. As the explanation was found to be not satisfactory the Disciplinary Authority ordered to conduct a departmental enquiry. After enquiry the Enquiry Officer found that all the charges levelled against here were proved. The Disciplinary Authority after giving an opportunity to be heard on the enquiry report passed a preliminary order proposing penalty of discharge from service with superannuation benefits for charge No. 1, to bring down to lower stage in the scale of pay by one stage for a period of one year for charge No. 2 and to give warning for charge No. 3. After hearing the charge sheeted employee about the proposed penalties the Disciplinary Authority imposed the proposed penalties in the preliminary order for charge Nos. 1 to 3 and thereby she was discharged from service with superannuation benefits i.e. with Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment with a stipulation not to give effect to the punishments imposed for charge Nos. 2 and 3. Challenging that order the workman preferred an appeal before the Appellate Authority and the same was dismissed vide order dated 18-10-2008.

13. It is after the dismissal of the appeal the workman raised the industrial dispute and reference was made to this tribunal. The validity of the enquiry and the legality of the imposition of penalty were challenged by the workman in the claim statement filed by her after her appearance before this tribunal. Management filed written statement denying the allegations challenging the validity of the enquiry as well as the legality of the imposition of penality. As the validity of the eqnuiry was challenged by the workman in the claim statement it was heard treating it was a preliminary issue and the enquiry was found to be invalid by this tribunal by passing the preliminary order dated 11-7-2011.

14. After invalidation of the enquiry both parties were afforded sufficient opportunity to adduce evidence. On the side of the management two witnesses were examined as MW1 & MW2 and Exts. M1 to M7 were got marked. From the side of the workman three witnesses were examined as WW1 to WW3. No documentary evidence was adduced.

15. After closing the evidence the arguments for both sides were heard.

16. The points for determination are :

(1) Whether the management has succeeded in proving all or any of the charges levelled against the workman ?

(2) Whether the penalties imposed by the management calls for any interference and if so what penalty to be impsosed for each of the three charges ?

(3) Reliefs and costs.

17. **Point No. 1 :** Since the enquiry was found to be vitiated it is necessary to have a detailed analysis of the evidence adduced by the parties before this tribunal in order to enter into the findings on the various charges levelled against the workman.

18. There are three items of charges of temporary misappropriation as to the amounts of remittance of three difference customers under charge No. 1. The first item is as to the temporary misappropriation of the amount of the customer Smt. A. Rahiyanath. The allegation is that an amount of Rs. 5000/- received by the workman from Smt. A. Rahiyanath for remittance on 10-5-2006 towards her demand loan account No. 57032613598 was not credited after making entry in her pass book and it was credited only on 23-5-2006. There is ample evidence in this case to prove that the amount of Rs. 5000/- was received on 10-5-2006 and the same was credited only on 23-5-2006 in her account. Ext. M4 is the counter foil of the pay-in-slip dated 10-5-2006 as to the remittance of Rs. 5000/- by her. Ext. M2 is the pass book relating to her account and there is entry as to the remittance of that amount on 10-5-2006. The amount was not credited in her account on10-5-2006 and the same is evidenced by Ext. M3 statement of account as to her loan account. The amount is seen to have been credited in her account only on 23-5-2006 and the same is evidenced by Ext.M3. Ext. M5 credit voucher is as to the remittance of Rs. 5000 on 23-5-2006. It is specifically averred in the proof affidavit of MW2 that Ext. M5 is in the handwriting of the workman. There is no serious challenge about it during her cross examination. MW2 who was acquainted with her handwriting is competent to give evidence to prove that Ext. M5 is in her handwriting. No contra evidence was adduced to prove that it is not in her handwriting. There is no case that she was not the Single Window Operator in the bank on 23-5-2006. In the light of the explanation offered by her to that charge it is not necessary to have any more evidence to prove the

allegation as to the temporary misappropriation of the amount received from Smt. A. Rahiyanath on 10-5-2006. There is absolutely no evidence in this case to prove that the amount brought by Smt. A. Rahiyanath to the counter was returned on the same day after making entries in the pass book and issuing counter foil to her for the receipt of the amount. It is highly improbable to think that the counter foil was issued after making entry in the pass book without counting the cash received from her.

19. The non-examination of A. Rahiyanath was pointed out by the learned counsel for the workman to discard the case of the management as to the alleged temporary misappropriation. She was examined before the Enquiry Officer. It is not necessary to examine her as a witness in this case in view of the documentary evidence and the explanation submitted by her. MW2 has given evidence to prove that Ext. M1(c) complaint was made by A. Rahiyanath about the misappropriation of the amount when she was informed by the Manager about the non remittance of any amount towards her loan account. Ext.M1(c) bears office seal with the date 23-5-2006 put by MW2. Based upon the version given by MW2 that it was not directly received from her by him it was argued by the learned counsel for the workman that the same cannot be relied on to prove that any such complaint was made by her. MW2 himself has given evidence about the receipt of the complaint from her. He was the Manager of the Ambalapuzha Branch of the Bank where the workman was working at that time. Merely for the reason that it was not directly received by him from the customer cannot be accepted as a reason to hold that no such complaint was submitted by A. Rahiyanath. There was no attempt on the part of the workman to prove that Ext. M1(c) complaint is not that of Smt. A. Rahiyanath. Non examination of Rahiyanath is not material in this case in view of the proved facts and circumstances. There is cogent and convincing evidence to prove the misappropriation of an amount of Rs. 5000 given by Smt. A. Rahiyanath to the workman for remittance. So the management has succeeded in proving the charge under item 1 of charge No. 1 in the charge sheet.

20. Item No.2 under charge No. 1 is about the misappropriation of an amount of Rs. 2500 remitted by Surya Kudumbasree to their account No. 67005013440. The allegation is that the workman had received the amount on 29-4-2006 and entry was made in the pass book, but it was actually credited only on 2-5-2006 in the loan account. In order to prove the same management has produced Ext. M6 statement of account and M7 counter foil of the pay-in-slip. Ext. M1(d) is the photocopy of the letter dated 6-6-2006 by which the Manager of the State Bank of Travancore, Ambalapuzha was informed by the President of the Kudumba Sree Unit as to the remittance of that amount on 29-4-2006. There is correction of the date in Ext. M7 and it appears that 29-4-2006 was corrected as 2-5-2006. In the explanation the workman would admit that the amount was brought on 29-4-2006. But it is stated that it was brought at the end of the day and since the account number was not seen clearly on the voucher, the customer was informed about it and after getting the correct account number it was credited on the next working day i.e. on 2-5-2006 as 30-4-2006 and 1-5-2006 were holidays. The pass book relating to that account is not produced in this case. The remittance was made on 2-5-2006 as per Ext. M6. Except Ext.M1(d) and the correction of the date in Ext. M7 there is no oral or documentary evidence to prove that the amount was misappropriated by the workman. The President of the Kudumbasree Unit is not examined as a witness in this case to prove that any such complaint was made by her. In Ext.M1(d) it is stated that the counter foil was not issued on 29-4-2006. The correction in the date of Ext. M7 is not seen to have been authenticated. It is not known whether it was corrected by the customer or by the workman in the absence of any corroborative piece of evidence. Hence it is not possible to conclusively determine whether that amount was misappropriated by the workman. So it can be held that item No. 2 under charge No. 1 is not duly proved by adducing convincing evidence in this case.

21. Item No. 3 under charge No. 1 is as to the misappropriation of the amounts of remittance from five customers by the workman. Eight instances of misappropriation are as to the remittance made by the customer S. Jayan towards his loan account No. 57032721900. Entries are there in Ext. M8 pass book with regard to the remittance of Rs. 1000 on 24-3-2005, Rs. 1500 on 16-7-2005, Rs. 1000 on 1-8-2005, Rs. 1200 on 20-2-2006, Rs. 1000 on 28-2-2006, Rs. 1000 on 7-4-2006, Rs. 800 on 18-4-2006 and Rs. 750 on 26-4-2006. In order to prove that those amounts were credited on subsequent dates management has produced Exts. M10 to M16 pay-in-slips and Ext. M9 statement of account. Ext. M9 statement of account is for the period from 1-1-2006 to 8-8-2011. As the statement of account for the year 2005 is not produced it is not possible to find out whether the amounts received on 24-3-2005, 16-7-2005, and 1-8-2005 were given credit to on subsequent days. But it can be clearly seen that the amounts as per Exts. M12 to M16 pay-in-slips were given credit on subsequent days after making entries in the pass book.

22. Ext. M35 will go to show that entry is to be made in a depositor's pass book only after posting it in the ledger and checking of the resultant balance by the supervising official. it is averred in the proof affidavit of MW-2 that Exts. M12, M14 and M16 are in the handwriting of the workman and it is not disputed during his cross-examination. Jayan when examined as WW-2 has stated during his cross-examination that Ext.M8 pass book is not his pass book. But he would admit that the pass book is in his name and address. Further he would

state that he cannot say whether the pass book of that account is now with him. He is an autorikshaw driver and on going through his deposition it can be seen that he is an interested witness and it is at the instance of the workman he came to give evidence in this case. Ext. M8 is stated to be his pass book by MW1. There is no valid reason to hold that Ext. M8 is not his pass book. Exts. M12 to M16 coupled with the entries in Exts. M8 and M9 are sufficient to prove the five instances of misappropriation in the year 2006. It cannot be conclusively held that the three instances of the alleged misappropriation in 2005 is duly proved in this case. Hence I find that the workman is guilty of the above said five instances of misappropriation of the amounts of remittance in the loan account of Jayan.

23. The allegation as to the misappropriation of the amounts of remittance of Malavika Kudumbasree is as to two instances. An amount of Rs. 2640 remitted in the account on 1-2-2006 was credited ib 11-3-2006 and an amount of Rs. 3000 remitted in the account on 8-4-2006 was credited only on 17-4-2006. Ext. M17 is the pass book with respect to SB account No. 57032690460 of Malavika Kudumbasree. Entry is made as to the remittance of Rs. 2640 on 1-2-2006 and Rs. 3000 on 8-4-2006. From Ext. M19 and M-20 counter foils of pay-in-slip and Ext. M18 statement of account it can be seen that the amount of Rs. 2640 was credited on 11-3-2006 and Rs. 3000 was given credit on 17-4-2006. Based on Ext. M17 to M20 it can be reasonably held that the workman had misappropriated the amounts of remittance of the customer Malavika Kudumbasree.

24. Regarding the customer R. Suseela Devi there is only one instance as to the misappropriation of amount of Rs. 1000 credited in her account on 15-5-2006 as per the entry in Ext. M21 statement of account. The remittance was made as per Ext. M22 counter foil of pay-in-slip. The charge is that it was received on 2-5-2006 by the workman and the same was credited on 15-5-2006 by making correction in the date in Ext.M-22. The pass book relating to that account is not produced in this case. Without the pass book and any other evidence it is not possible to arrive at a conclusion that the amount was misappropriated by the workman by correcting the date in Ext. M22 by herself. Hence it cannot be held that there was misappropriation of that amount by the workman.

25. The charge as to the MTL Account No. 57032617752 of G Unnikrishnan is with respect to four instances of misappropriation of Rs. 3000 each. The amounts received by the workman on 7-7-2005, 16-8-2005, 30-9-2005 and 20-4-2006 are alleged to have been given credit to on 19-7-2005, 18-8-2005, 8-11-2005 and 29-4-2006. The receipt of those amounts on the various dates by the workman is duly proved through Ext. M23 pass book. Exts. M25 to M28 counter foils of the pay-in-slip coupled with Ext. M24 statement of account can be relied on to prove that the amounts received by the workman on those days were subsequently credited in his account as alleged in the charge sheet. All the four instances of misappropriation are duly proved through the production of Exts. M 23 to M28. The receipt of Ext. M23 pass book by the Branch Manager of the Bank is admitted by him during his examination as WW1. He has stated during his chief examination that Ext.M25, M26 and M28 are in his handwriting and the handwriting in Ext. M27, is not that of him. In the proof affidavit of MW2 it is specifically averred that Ext.M27 is in the handwriting of the workman and the same remains unchallenged during his cross-examination. There is convincing evidence in this case to prove that the workman misappropriated the amounts received by her for remittance towards his loan account.

26. In order to prove the alleged misappropriation of Rs. 3500 remitted in the Agricultural Cash Credit Account No.57032595395 of Smt. K.S. Sindhu management has produced Ext. M30 counter foil of pay-in-slip and Ext. M29 statement of account. The pass book relating to that account is not produced in this case. Ext. M30 is dated 11-2-2006. From Ext. M29 it can be seen that the amount was not given credit to in that account on that day. There is an entry in it as to the remittance of Rs. 3500 on 11-5-2006. Without the production of the pass book or other evidence it cannot be held that there was misappropriation of that amount by the workman.

27. Charge No. 2 is as to the negligence of the workman in not obtaining the signature of the remitters on cash receipt vouchers disregarding the extant instructions of the bank. The two credit vouchers made mention of are voucher dated 8-11-2005 for Rs. 3000 as to account No. 57032617752 and for Rs. 3500 dated 11-2-2006 as to account No. 57032595395. Exts. M27 and M30 are counter foils of the pay-in-slip relating to those two instances. There is signature in the space for Cashier in Ext. M27. Similar signature is seen in Ext. M30. It is not in the space for signature of Cashier. In Ext.M27 there is no space for the signature of the customer. The charge is that the signatures of the customer was not obtained by the workman in those two credit vouchers disregarding the instructions of the bank. But no evidence was addued in this case to prove that there was any such instruction. There is no reliable evidence in this case to prove charge No. 2 levelled against the workman.

28. Change No. 3 is as to the correction of the dates in four credit vouchers. It is for not authenticating the corrections. Exts. M-20, M33, M22, M31 were produced to prove the same. MW2 has stated during his cross-examination that if correction is to be made in the pay-in-slip it is to be made by the person who brought it with his signature. There is a circular containing such an

instruction. It is not produced in this case. It is to be proved that the corrections required authentication by the remitters. As it is not duly proved in this case the workman cannot be found guilty of charge No. 3 in the charge sheet.

29. Management has succeeded in proving item No. 1 under charge No. 1 and the misappropriation of the amounts of the customer S. Jayan, Malavika Kudumbasree and G Unnikrishnan in item No. 3 under that charge.

30. **Points No. 2** :—There are several instances of mis-appropriation by the workman. It is a gross misconduct. Management has imposed the penalty of discharge with superannuation benefits under Clause 6(d) of Settlement dated 10-4-2002 for charge No. 1. In the decision reported in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar (2003) 4 Supreme Court cases 364 it was held :

> "Every Officer/employee of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank office. Good Conduct and discipline are inseparable from the functioning of every officer/employee of the bank".
>
> Further it was held :
>
> "Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigation it may, in exceptional and rare cases, impose the appropriate punishment by recording cogent reasons in support thereof."

As it is a case of misappropriation with clinching evidence it cannot be held that the penalty imposed is shockingly disproportionate to the proved charges levelled against her. There is no reason to impose a lesser punishment in view of the facts and circumstances in this case. Hence the workman is imposed with the penalty of discharge from services with superannuation benefits, i.e., with Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.

31. **Point No. 3** :—In view of the findings on point Nos. 1 & 2 I find that the action of the management of State Bank of Travancore in discharging the workman from services w.e.f. 19-4-2008 is justified.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of September, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witnesses for the Workman

WW1 — G. Unnikrishnan, 'Anugraha', Chembakassery Nagar, Komana, Ambalapuzha P.O., Alleppey District.

WW2 — S. Jayan, Kunnel House, Near Payalkulangara Temple, Karoor, Ambalapuzha P.O., Alleppey District.

WW3 — Smt. R. Vimala, Parvathy Nilayam, Near Pulickal Temple, Komana, Ambalapuzha P.O., Alleppey District.

Witnesses for the Management

MW1 — Smt. Kumari N. Santha, Manager, State Bank of Travancore (Enqiry Officer).

MW2 — D. Jayaprakash, Chief Manager, State Bank of Travancore, Mulanthuruthy Branch, Ernakulam District.

Exhibits for the Workman Nil

Exhibits for the Management :

M1(a) Charge sheet dated 9-1-2007 issued by the Disciplinary Authority, Assistant General Manager III(E) to the workman.

M1(b) Reply letter dated 19-2-2006 submitted by the workman to the Asstt. General Manager III, State Bank of Travancore, Zonal Office, Ernakulam.

M1(c) Photocopy of the letter dated 22-5-2006 addressed to the Manager, State Bank of Travancore, Ambalapuzha by Smt. A. Rehiyanath.

M1(d) Photocopy of the letter dated 6-6-2006 addressed to the Manager, State Bank, Ambalapuzha by Smt. Thresiamma, President, Surya Kudumbasree.

M1(e) Photocopy of the letter dated 11-6-2008 addressed to the Assistant General Manager-III, SBT Zonal Office, Panampillynagar, Ernakulam by Shri Jayan S.

M 2 Pass book issued from the Ambalapuzha branch of the State Bank of Travancore of Smt. A. Rahiyanath.

M 3 Photocopy of the Statement of Account for the period from 1-1-2005 to 8-8-2011 as to Account No. 57032613598 in the name of Smt. A. Rahiyanath.

M 4 Counter foil of the pay-in-slip dated 10-5-2006 in the name of Smt. A. Rahiyanath for remittance of Rs. 5000

M 5 Credit voucher dated 23-5-2006 for Rs. 5000 in the name of Smt. A. Rahiyanath.

M 6 Photocopy of the Statement of Account for the period from 1-12-2005 to 1-8-2011 as to Account No. 67005013440 in the name of Surya Kudumbasree.

M 7 Pay-in-slip dated 2-5-2006 as to remittance of Rs. 2500 in the account of Surya Kudumbasree.

M 8 Pass-book issued from the Ambalapuzha Branch of the State Bank of Travancore to Shri Jayan S.

M 9 Photocopy of the Statement of Account for the period from 1-1-2006 to 8-8-2011 as to Account No. 57032721900 in the name of Shri Jayan S.

M 10 Pay-in-slip dated 22-7-2005 as to remittance of Rs. 1500 in the Account of Shri S. Jayan.

M 11 Pay-in-slip dated 12-8-2005 as to remittance of Rs. 1000 in the account of Sri S. Jayan.

M 12 Pay-in-slip dated 16-3-2006 as to remittance of Rs. 1200 in the account of Shri S. Jayan.

M 13 Pay-in-slip dated 22-3-2006 as to remittance of Rs. 1000 in the account of Shri S. Jayan.

M 14 Pay-in-slip dated 18-4-2006 as to remittance of Rs. 1,000 in the account of Shri Jayan.

M 15 Pay-in-slip dated 26-4-2006 as to remittance of Rs. 750 in the account of Shri S. Jayan.

M 16 Pay-in-slip dated 27-4-2006 as to remittance of Rs. 800 in the account of Shri Jayan.

M 17 Pass-book issued from the Ambalapuzha Branch of the State Bank of Travancore to M/s. Malavika Kudumbasree.

M 18 Photocopy of Statement of Account for the period from 1-1-2006 to 9-8-2011 as to Account No. 57032690460 in the name of M/s. Malavika Kudumbasree.

M 19 Pay-in-slip dated 11-3-2006 as to remittance of Rs. 2640 in the account of M/s. Malavika Kudumbasree.

M 20 Pay-in-slip dated 17-4-2006 as to remittance of Rs. 3000 in the account of M/s. Malavika Kudumbasree.

M 21 Photocopy of the Statement of Account for the period from 1-1-2006 to 31-12-2006 as to Account No. 57032663005 in the name of Mrs. Suseela Devi.

M 22 Pay-in-slip dated 15-5-2006 as to remittance of Rs. 1000 in the account of Smt. R. Suseela Devi.

M 23 Pass book of joint account of Sri G. Unnikrishnan and Smt. Anitha Bai in the State Bank of Travancore, Ambalapuzha.

M 24 Photocopy of the Statement of Account for the period from 1-1-2005 to 8-8-2011 as to Account No. 57032617752 in the name of Sri. Unnikrishnan G and Smt. Anitha Bai.

M 25 Pay-in-slip dated 19-7-2005 as to remittance of Rs. 3000 in the joint account of Sri. G. Unnikrishnan and Smt. Anitha Bai.

M 26 Pay-in-slip dated 18-8-2005 as to remittance of Rs. 3000 in the joint account of Sri. G. Unnikrishnan and Smt. T.K. Anitha Bai.

M 27 Credit voucher dated 8-11-2005 for remittance of Rs. 3000 in the joint account of Sri. Unnikrishnan and Smt. T.K. Anitha Bai.

M 28 Pay-in-slip dated 29-4-2006 as to remittance of Rs. 3000 in the joint account of Sri. G. Unnikrishnan and Smt. T.K. Anitha Bai.

M 29 Photocopy of the Statement of Account for the period from 1-3-2005 to 8-8-2011 as to Account No. 57032595395 in the name of Mrs. Sindhu K.G

M 30 Pay-in-slip dated 11-2-2006 as to remittance of Rs. 3500 in the account of Smt. K.S. Sindhu.

M 31 Pay-in-slip dated 29-4-2006 as to remittance of Rs. 5000 in the account of Shri Sreekumar R.

M 32 Photocopy of the statement of Account for the period from 1-1-2006 to 31-12-2006 as to Account No. 57032620301 in the name of Sreekumar R. and Aswathi R.

M 33 Pay-in-slip dated 4-4-2006 as to remittance of Rs. 1800 in the account No. 67004792618 in the name of Naveena SHG

M 34 Photocopy of the Statement of Account for the period from 1-1-2005 to 8-8-2011 as to Account No. 57032689513 in the name of Naveena Swayam.

M 35 Photocopy of page 3 of Chapter IV of the Bank's Book of Instructions.

M 36 Photocopy of the Circular No. 78/2004 dated 3-9-2004 issued by State Bank of Travancore, Head Office, Thiruvananthapuram.

M 37 Photocopy of the Staff Circular No. 32/2005 dated 6-10-2005 issued by State Bank of Travancore, Head Office, Thiruvananthapuram.

नई दिल्ली, 21 जनवरी, 2013

का. आ. 398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 63/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/240/1995-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 63/1996) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 21-1-2013.

[No. L-20012/240/1995-IR (C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 63 of 1996

PARTIES:

Employers in relation to the mgt. of N. K. Area, M/s. CCL

AND

Their workman.

PRESENT:

Shri Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Management : Sri D. K. Verma, Advocate

For the Union/workman : Sri. B. B. Pandey, Advocate

STATE : Jharkhand INDUSTRY : Coal

Dated, 11-1-2013

AWARD

By Order No. L-20012/240/95-IR (CM-I), dated 30-9-1996 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the claim of the Union that S/Sh. Baban Ram E.P. Fitter, Shyamjit E.P. Helper, Ramdeo Ram E.P. Helper and Mansoor Khan Auto Fiuller were not allowed to join at N. K. Area of M/s. C.C.L on their transfer from Urimari Project of M/s. C.C.L is justified ? If so, Whether the demand for wages for the period 23-9-1992 to 31-3-1993 for these workmen by the Union is justified ? If so to what relief are these workmen entitled ?"

2. In this reference case both the parties have filed their respective written statements and rejoinders.

3. The short point raised by the workman named in the reference schedule, that they were transferred to colliery N. K. Area by the management Central Coal Field Limited, Darbhanga House, Ranchi to work there, vide Ext. MW-1. It is ordered for transmission of service Book, L.P.C. Leave A/C etc. soon after their relieve. They reported their duty at N. K. Area. N. K. Area management did not allow the workmen to work there vide Ext. MW-2 saying they are unable to accommodate the workmen. The workmen could not be absorbed in N. K. Area and again returned to their parent management and absorbed there. But the parent department did not pay the salary of the workmen during interim period i.e. from 23-9-92 to 31-3-93.

4. Since the workman is obedience of the management direction proceed to N. K. Area approached there, could not be accommodated, returned to the parent department as appears from MW 1 & MW 2. It is not understood why they will not be given wages for the interim period.

5. There is no manner of negligence or delay on the part of the workmen.

The management is directed to implement the Award immediately, and give their wages for the period from 23-9-92 to 31-3-93.

The claim of the workmen is justified.

This is my Award.

R. K. SARAN, Persiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या

19/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/317/2001-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 21-1-2013.

[No. L-20012/317/2001-IR (C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 19 of 2002

PARTIES:

Employers in relation to the mgt. of M/s. CCL, Bhurkunda colliery

AND

Their workman.

PRESENT:

Shri Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Management : Vivek Kumar, Sr. Officer, Personnel

For the Union/workman : Sri. Upendra Kumar Rana, concerned workman

STATE : Jharkhand INDUSTRY : Coal

Dated, 10-1-2013

AWARD

By Order No. L-20012/317/2001-IR (CM-I), dated 20-2-2002 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

SCHEDULE

"Whether the action of the management of M/s. CCL, Bhurkunda colliery in not giving employment to Shri Upendra Kumar Rana on compassionate ground on the death of his father Shri Prahallad Rana is just and fair ? If not, to what relief is the applicant entitled ?"

2. Both parties are noticed, during the progress of the case the workman submitted that, the management has fulfilled his demand and subside the dispute he raised. Management has submitted the samething. In that respect a withdrawal memo of the case filed. Copy served. Heard both side. It is felt the disputes between the parties have already over. Hence no dispute award is passed. Communicate to the Ministry.

R. K. SARAN, Persiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 74/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/17/1991-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 21-1-2013.

[No. L-20012/17/1991-IR (C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a reference U/s 10(1)(d)(2A) of the I.D. Act, 1947

Ref. No. 74 of 1991

Employers in relation to the management of East Katras Colliery of M/s. B.C.C.L.

AND

Their workmen.

PRESENT :

Shri Ranjan Kumar Saran, Presiding Officer

APPEARANCES :

For the Employers : None

For the workman : None

STATE : Jharkhand INDUSTRY : Coal

Dated, 11-1-2013

AWARD

By Order No. L-20012/17/1991-IR (C-I), dated 24-7-1991, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of East Katras Colliery of M/s BCCL is justified in superannuating w.e.f. 1-7-1990 Shree Sukur Rajwar, S/o Bandhu Rajwar, resident of Village Panchwarpur, P.O.-Sardala, P.S.-Rajawali, Distt.-Nawada ? If not to what relief is the workman entitled to ?"

2. In this reference case both the parties have filed their respective written statements and rejoinders.

3. The case of the workman is that he has been wrongly retired by the management though, he did not attained sixty years of age that is the age of retirement. On the other hand the management submitted by written statement that the Date of Birth of the concerned workman Sukar Rajwar S/o Bhado Rajwar is 1-7-1930 and as such he retired on 1-7-1990. Management further sumbitted there was another workman in their organization Sukar Rajwar S/o Bandhu Rajwar whose Date of Birth was 1-1-1942, who took voluntary retirement from job and received all his retirement benefit. But by mistake the service excerts of Sukar Rajwar S/o Bandhu Rajwar Date of Birth 1-1-1942 served on the present workman Sukar Rajwar S/o Bhado Rajwar whose Date of Birth is 1-1-1930 for which he claimed that he should not have been retired on 1-1-1990, for which the dispute raised and referred for decision.

4. During hearing, the management exhibited six documents examined on witness, which was cross examined by the workman. But the workman did not examine any witness on his behalf. Though both the management and the workman were noticed by regd. post but none turned up persued the claim of the parties persued the evidence on record and the documents exhibited. The service exerts of both the present workman Sukar Rajwar S/o Bandhu Rajwar and Sukar Rajwar S/o Bhado Rajwar exhibited in this case marked Ext. M-2 and M-2/1. It is seen that the Date of Birth of the present workman is 1-1-1930 and Sukar Rajwar S/o Bandhu Rajwar Date of Birth is 1-1-1942. The document of retirement of the workman filed. The Clerk who wrongly handed over the service exerts of Sukar Rajwar S/o Bandhu Rajwar has been examined as MW-1 he has proved all the documents and narrated the facts. From cross examination nothing substantial elicited by the workman. The workman did not come forward though noticed nor any document to show that his Date of Birth was not 1-1-1930, therefore the management has rightly retired the workman on 1-7-1990.

Hence the workman is not entitled to any relief and the reference answered in negative.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 96/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/97/2004-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 96/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 21-1-2013.

[No. L-20012/97/2004-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a reference U/s 10(1)(d)(2A) of the I.D. Act, 1947

Ref. No. 96 of 2004

Employers in relation to the management of Western Washery Zone of M/s. B.C.C.L.

AND

Their workmen.

PRESENT:

Shri Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : None

STATE : Jharkhand INDUSTRY : Coal

Dated, 11-1-2013

AWARD

By Order No. L-20012/97/2004-IR (C-I), dt. 14-9-2004, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, has referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of BCCL, Western Washery Zone to change the date of increment of Sri N. C. Jha and Sri N. N. Thakur from April to December, is just and fair ? If not, to what relief are Sri N. C.Jha and Sri N. N. Thakur entitled ?"

Due notice was served on the parties, claim statement and rejoinder has been filed. But after that on prayer of the workman the case is fixed. The workman, took down the date of the case posted. Therefore only one date the concerned workman is present. And from 11-9-2008 till date the workman is not present. Though adequate opportunity was given, the workman did not turn up. Four years has been elapsed. It seems that the workman has lost interest in this case. There is no necessity to linger this case.

Hence No Dispute Award passed. Communicate to the Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 112/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2012 को प्राप्त हुआ था ।

[सं. एल-20012/71/1991-आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 402.—In pursuance of Section 17 of the Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 21-1-2013.

[No. L-20012/71/1991-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (NO. 1), DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 112 of 1991

PARTIES:

Employers in relation to the Management of Bhowra (N) Colliery, M/s. B.C.C.L.

AND

Their workman.

PRESENT:

Shri Ranjan Kumar Saran, Presiding Officer

APPEARANCES:

For the Management : None

For the Union/workman : None

STATE : Jharkhand INDUSTRY : Coal

Dated, 11-1-2013

AWARD

By Order No. L-20012/71/1991-IR (C-I), dated 22-10-1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Bhowra (N) Colliery of M/s. BCCL in dismissing She Raghuni Rewani, Fan Operator I.D. Card No. 124957 vide letter No. PS/90 (N)/UG Mines/Dismissal/371 dated 8/10-4-90 and in dismissing Sri Jugal Rewani, prop. Mazdoor, I.D. Card No. 124944 vide letter No. PS/90 (N)/UG mines/Dismissal/372 dated 8/10-4-90 is justified ? If not, to what relief are the workmen entitled ?"

(2) Both parties notices, submitted their claim statements and rejoinders. In this case both the workmen

were terminated from Service by the management as they have impersonated. Department enquiry held, they are found guilty and then removed after conciliation, reference made. Two witness, one A.S.I. of police and one Chowkidar examined in the case on behalf of the management and cross-examined. Previously preliminary enquiry was conducted by this tribunal to appreciate the fairness of the enquiry by the management and it was held that the enquiry was not fair and proper. That order of the Tribunal was not challenged before any court and that became final.

(3) Two witness examined in this case one is Chowkidar MW-1, and second witness MW-2 Simply went to village showed the two photographs of the workmen in the village they say that did not belong to the workmen, then submitted negative report against the workmen.

(4) MW-2 the A.S.I. of Police in his evidence has stated that Sibu Ray S/o Govind Ray, when his photograph was shown to a villager Jugal Rawani. But the management sought police report to ascertain whether Chirku Ray S/o Govind Ray. He has not stated in his evidence definately that, there is or was no Chirku Ray S/o Govind Ray, therefore the evidence of MW-2 of A.S.I. of police is not believed.

(5) To prove the case of identity and impersonation, examination and report of the village head man or any respectable person of the village is to be examined in the Court.

(6) Mere report of an A.S.I. of police and his evidence, and First evidence of a Chowkidar MW1 is not sufficient to hold that both the workmen have impersonated themselves. In absence of sufficient evidence it cannot be held that the workmen impersonated themselves.

Hence dismissal of the workmen is illegal they will be reinstated in the service with 50% back wages.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का.आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दि न्यू इण्डिया एस्योरेन्स कम्पनी लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 40/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-2013 को प्राप्त हुआ था ।

[सं. एल-17012/19/2003-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the industrial dispute between the management of The New India Assurance Company Ltd., and their workman, which was received by the Central Government on 18-1-2013.

[No. L-17012/19/2003-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Disputes No. 40 of 2003

BETWEEN :

Sri Om Parkash Yadav, son of Sri Narain Yadav,
C/o S Kushwaha,
EWS-884, Barra-2,
Yadav Market,
Kanpur

AND

The Deputy General Manager,
The New India Assurance Company Limited,
Regional Office,
15/60 Green House,
Civil Lines,
Kanpur

AWARD

1. Central Government, MoL, New Delhi vide Notification No. L-17012/19/2003-IR-B-1 dated 27-11-2003 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Dy. General Manager, The New India Assurance Company, Kanpur, in terminating the services of Sri Om Parkash Yadav vide order dated 2-8-2002 is legal ? If not to what relief the workman is entitled ?

3. Brief facts are :

4. It is alleged that opposite party is engaged in the Insurance business and is having its Head Office at Mumbai and is also having Regional Office at Green House, Civil Lines, Kanpur. The opposite party is also having its guest house at Flat No. 81, 15/197 Ratan Mahal, Civil Lines, Kanpur. It is alleged that the claimant was engaged as caretaker as fourth class employee in the year 1977 by the oppoiste party to look after the guest house and to provide the services to their guests. At the time of employment he was granted Rs. 2000 per month thereafter it was increased

to Rs. 2500 per month w.e.f. 1-11-97 and in the end he was getting Rs. 4000 per month as salary.

5. It is stated that he was engaged as a Class IV employee, but to flout the provisions of the Act, he was forced to sign an agreement so that the opposite party may take the protection in refusing the employment to the claimant.

6. The claimant was being paid under the head of salary and is also shown from the voucher of March 2002. When the claimant requested the claimant that he should not be forced to sign the argeement and he should be allowed the wages under the head of salary, thereafter, the management decided not to continue the agreement after April 2000, but the management continued to engage him as caretaker he was being paid salary as usual. When the payment for July 2002 was made under the garb of cleanliness of the guest house etc. then he showed his annoyance. Thereafter, his services were terminated by the opposite party vide letter dated 2-8-02. After that the workman also wrote a letter dated 14-8-2002 for his reinstatement. It is stated that he has completed 240 days since 1997 every year and his services have been terminated getting annoyed on 2-8-02 without issuing any notice and making payment of compensation. It is also stated that he has never issued any letter the renewal of the contract agreement.

7. Therefore, he has prayed that he should be reinstated with all consequential benefits.

8.Opposite party has filed the written statement. It is stated by them that the workman/claimant was kept as a caretaker on the basis of an agreement for their guest to look after the guest house and to provide services to the inmates of the guest house. For this work the claimant has also engaged one helper and sweeper for cleanliness of the guest house. For this work the claimant used to submit the bill for the payment each month and the opposite party used to pay the amount of the bill to the claimant. The copy of the bills which were given by the claimant has been filed along with the written statement. He was never engaged as a casual labour nor is there relationship of master and servant in between the parties. He was never paid under the head of salary. Opposite party has filed the copy of agreement on the basis of which the claimant was engaged as caretaker vide agreement dated 1-4-2000. The agreement was for one year. Before expiry the claimant used to pray for its renewal which was renewed from time to time. He was never forced to sign the agreement. In the last the claimant has submitted an application dated 12-4-02, for the renewal of the agreement, a photocopy of which has been filed. It is stated that the office of the opposite party is a public sector company and for recruitment there are prescribed rules. The claimant was never employed or engaged after following any prescribed procedure.

9. It is stated that when the claimant did not appear before the Dy. Manager, according to Clause IV of the agreement then his agreement was terminated with effect from 31-7-02. Under such circumstances question does not arise to issue notice before his termination under the provisions of the Act. Therefore, they have prayed that the workman is not entitled for any relief.

10. Rejoinder has also been filed by the claimant but nothing new has been disclosed therein except confirming the pleas of his claim statement.

11. Both the parties have filed oral as well as documentary evidence. Under the oral evidence claimant has produced him as W.W. 1. Opposite party has produced M.W. 1 Sri Sudarshan Kumar who is Assistant Manager.

12. I have examined the oral as well as documentary evidence.

13. It has been contended by the opposite party that the claimant was engaged as a caretaker to look after the guest house. He was engaged as a contractor on the basis of an agreement, whereas the claimant has claimed that all these agreements are fictitious, the claimant was forced to sign on these agreements the opposite party has actually employed him as a class IV servant and in the garb of that he should not be given a permanent post so they use to prepare these argeements. The claimant has invited my attention towards this agreement which has also been filed by the opposite party. Agreement paper No. 21/1 has been made effective on 1-4-99, but the signature of the claimant has been obtained on 23-3-99. There is no signature either of employer or claimant under the date 1-4-99. Similarly agreement which starts from 1-4-98, signature on this agreement of the claimant has been obtained on 20-5-98, i.e. after the execution of the agreement. Similarly on agreement which starts from 1-4-2000, it has been notarized on 23-4-2000. It is claimed by the workman that his services had been terminated on 2-8-2002. If there was an agreement for each year why there was not any agreement starting from April 2001. There is no such agreement for the period April 2001 till the termination of the service of the claimant.

14. It is contended by the opposite party that the claimant has moved an application for renewal of the agreement but later on he did not turn up. This contention and evidence of the opposite party has been refuted by the claimant. Claimant has specifically stated on oath that the application dated 12-4-2002, regarding renewal has not been given by him to the opposite party and it does not bear his signature. It is contended by workman that if these signatures belongs to the claimant then the opposite party was having an opportunity to get his signature compared from hand writing expert, but they did not produce any such evidence.

15. I have also examined and compared the signature of the claimant from the original agreement which has been filed by the opposite party itself. This agreement carries the signature of the claimant in English and that also in a stylish way. Whereas the signature on the application dated 12-4-2002 is in Hindi and written as Om Parkas Yadav, therefore, the opposite party has failed to prove that this application was given by the claimant. Moreover, this application bears the date 12-4-02, whereas there is no such agreement for 2001 to 2002. Therefore, clearly under these circumstances the workman was not working under the agency of contractor particularly from the period 1-4-2001 till the end of the termination of his service.

16. It is also contended by the workman that under this agreement the clause written by the opposite party is to terminate the services of the caretaker and it is no where written that under this agreement the contract shall be terminated.

17. It is also contended that the opposite party is a reputed public company. If they had given this contract to the claimant then it was expected from them that they should have made an advertisement in the news paper or would have invited some tender or quotations from the reputed contractor, but they did not made any such advertisement.

18. All the bills of payments have been made on the printed formate of the opposite party. There is no demand of money from the side of the claimant on the printed formate of the claimant. Claimant has invited my attention towards paper no. 15/5–22. These are bills of payment. These have been admitted by the opposite party. Last bill is of July 2002. In one of the bill which is paper no. 15/5, the opposite party itself has written in the encircled column done by the court, the word salary for the month of March 2002 Rs. 5300 has been written. The opposite party has not given any explanation in respect to the word salary. Therefore, the inference can be drawn that the opposite party was making payment of salary to the claimant but under the garb of an agreement, which could not be called the fair practice.

19. I have examined the evidence adduced by the claimant as W.W. 1 and the evidence of opposite party adduced as M.W. 1 Sudarshan Kumar. Several questions were put to M.W. 1 by the auth. Repersentative for the workman in the cross. To almost each question which was put to him he did not reply properly, but every time showed his ignorance or having no knowledge. In such circumstances no weight-age can be given to his evidence. Whereas the evidence of W.W. 1 that has been thoroughly cross examined cannot be belied and appears to be trust worthy.

20. From the evidence it is also clear that the claimant has worked for more than 240 days within a calendar year preceding the date of his termination i.e. 2-8-02. It is also clear that no notice, notice pay or retrenchment compensation etc., has been paid to the claimant before his termination as provided under the provisions of Industrial Disputes Act, 1947. The services of the claimant has been obtained by the opposite party continuously for years together, the provisions of the Act does not distinguish the nature of job either it may be permanent temporary or otherwise. It is also pertinent to mention that upkeep of the guest house is of a permanent nature and after the termination of the services of the workman the opposite party is expected to maintain the upkeep of the guest house.

21. Therefore, considering the facts and circumstances of the case I am of the view that the claimant has been able to prove his case and the action of the opposite party is not found just and fair under the provisions of the Act. Therefore, the workman requites to be reinstated.

22. I have gone through facts that how much back wages the workman is to be given. In March 2002 it has been shown that he was paid Rs. 4000 plus Rs. 1000 for helper and Rs. 300 for sweeper. Considering the facts I am of the view that he will get 25% as back wages and that to of the amount of Rs. 4000 because in the absence of services of any helper or sweeper, services have not been obtained.

23. Reference is decided accordingly in favour of the workman and against the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायायल, भुवनेशवर के पंचाट (संदर्भ संख्या 67/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/100/2008-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 21st January, 2013

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 21-1-2013.

[No. L-12012/100/2008-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

SHRI J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 67/2008

Date of Passing Award—18th December, 2012

BETWEEN:

The Asst. General Manager,
State Bank of India,
Bapujinagar Branch,
Dist. Khurda,
Bhubaneswar, (Orissa) ... 1st Party-Management

(And)

Their workman Sri Pradip Kumar Sahoo,
Qr. No. VR-5/1,
Kharvela Nagar, Unit-3,
Bhubaneswar, (Orissa) ... 2nd Party-Workman

APPEARANCES :

Shri Alok Das, : For the 1st Party-Management
Authorized Representative

None : For the 2nd Party-Workman

AWARD

1. The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/100/2008-IR(B-I), dated 7-10-2008 to this Tribunal for adjudication to the following effect :

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Pradip Kumar Sahoo w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified ? To what relief is the workman concerned entitled" ?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger in March, 1989 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 29-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute alongwith 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 33 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank in March, 1989 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the

Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has not gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Sahoo had allegedly been terminated in March, 1990 his claim has become stale by raising the dispute after seventeen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed :

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified ?

2. Whether the workman has worked for 240 days as enumerated under section 25-F of the Industrial Disputes Act ?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Pradip Kumar Sahoo w.e.f. 30-9-2004 is fair, legal and justified ?

4. To what relief is the workman concerned entitled ?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

Issue No. 1 :

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. This dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case :

> "Whether the action of the Management of State Bank of India, Orissa Circle Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified ? If not, what relief the worken are entitled to ?

8. The name of the 2nd party-workman appears at Sl. No. 33 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

Issue No. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in March, 1989 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay

Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in out Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch since March, 1990." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

Issue No. 3 :

10. Since the 2nd Party-workman could not prove that the had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Pradip Kumar Sahoo with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

Issue No. 4 :

22. In view of the findings recorded above under Issue Nos. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान स्टील वर्क्स कंस्ट्रक्शन लिमिटेड, कोलकाता एवं मैसर्स सेनापति इन्टरप्राइजेज उड़ीसा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-29011/13/2012-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Steel-Works Construction Ltd. Kolkata and M/s Senapati Enterprises, Odisha and their workman, which was received by the Central Government on 11-1-2013.

[No. L-29011/13/2012-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT :

SHRI J. SRIVASTAVA, Presiding Officer,
C.G.I.T.-*cum*-Labour Court, Bhubaneswar

Industrial Dispute Case No. 12/2012

Date of Passing Order—23rd November, 2012
Lok Adalat

BETWEEN :

1. Chairman-cum-Managing Director,
M/s. Hindustan Steel-Works Construction Ltd.,
(A Government of India Undertaking),
Registered Office,
P/34A, Gariahat Road (South),
Dhaturia,
Office-Commissariat Road,
Hastings, Kolkata-700022.

2. The General Manager (P & A),
M/s. Hindustan Steel-Works Construction Ltd.,
(A Government of India Undertaking)
Commissariat Road,
Hastings,
Kolkata-700022,
West Bengal

3. Asst. General Manager,
M/s. Hindustan Steel-Works Construction Ltd.,
(A Government of India Undertaking),
Rourkela Steel Plant Premises,
At/Po. Rourkela-769 011,
Dist. Sundargarh,
Orissa

4. M/s. Senapati Enterprises,
C/o. Subash Chandra Senapati,
At/Po. Daily Market,
P.O. Rourkela-1,
Dist. Sundargarh,
Odisha. ... 1st Party-Managements

AND

Abhimanyu Mohanty,
C/o. N. K. Mohanty,
General Secretary,
Ispat Labour Union,
Qtrs. No. G/294,
Sector-19,
Rourkela-769 005,
Dist. Sundargarh, Orissa ... 2nd Party-Workman

APPEARANCES :

Shri Jintendra Kumar Chief Projects Manager	: For the 1st Party-Management No. 1 to 3
Authorized Representative	: For the 1st Party-Management No. 4
Shri Abhimanyu Mohanty	: For himself-2nd Party-Workman

ORDER

Case taken up today before Lok Adalat. Authorized representatives for the 1st Party-Management No. 1 to 4 and 2nd Party-workman in person are present.

This case has been filed directly by the workman Shri Abhimanyu Mohanty for adjudication of an industrial dispute existing between him and the Management of M/s. Hindustan Steel-works Construction Limited and others. During pendency of this case the Government of India in the Ministry of Labour has also referred the same industrial dispute relating to the present workman along with four others vide I.D. Case No. 79/2012. Hence the workman has moved a petition on 16-10-2012 for withdrawal of the I.D. Case No. 12/2012 filed by him. The 1st Party-Management to 1 to 4 has not opposed the petition. Hence the petition is allowed and the 2nd Party-workman is permitted to withdraw the case registered under I.D. Case No. 12/2012.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय विमानपत्तन प्राधिकरण, (मुम्बई) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई-1 के पंचाट (संदर्भ संख्या 41/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-11012/8/99-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/1999) of the Central Government Industrial Tribunal/Labour Court, Mumbai-1 now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Airport Authority of India, (Mumbai) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-11012/8/99-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, MUMBAI

JUSTICE G S. SARRAF, Presiding Officer

Reference No. CGIT-1/41 of 1999

PARTIES :

Employers in relation to the management of Airport Authority of India

AND

Their Workman (Salim Mohd. Hussain)

APPEARANCES :

For the Management	: Ms. Geeta Raju, Adv.
For the Workman	: Mr. Jaiprakash Sawant, Adv.

State : Maharashtra

Mumbai, dated the 7th day of December, 2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal :

> "Whether the action of the management of Airport Authority of India (NAD) Mumbai in not regularizing the services of Shri Salim Mohd. Hussain, Sweeper even though his name appears in the list at Sl. No. 77 of the list annexed in the Supreme Court judgement is justified ? If not, to what relief the workman is entitled ?

According to the statement of claim filed by the workman Salim Mohd. Hussain he was employed in the capacity of sweeper by the first party. He was in continuous employment of the first party. The contract labourers including him were agitating for regularization. Finally, the Apex Court directed the first party to absorb them in permanent employment. His name was included in the writ petition filed in this regard. However, he was refused employment by the first party and thus he was given discriminatory treatment. He has, therefore, prayed that the first party be directed to regularize his services with all consequential benefits.

The first party has filed written statement wherein it has stated that the union submitted a list of contract employees in the Supreme Court but the name of the second party workman is not there in the list. It has, therefore, prayed that the reference be rejected.

Follwoing Issues have been framed :

(1) Whether the workman Salim Mohd. Hussain is entitled to reliefs claimed by him for the reason Supreme Court directed the Airports Authority of India to absorb him ?

(2) Whether the workman was unable to report to his duties on account of the fact he was ill ?

(3) What relief, if any, to which the workman is entitled to ?

The second party workman has filed his affidavit and he has been cross-examined by learned counsel for the first party. The first party has filed affidavit of N. P. Selvan who has been cross examined by learned counsel for the second party workman.

Heard Mr. Jaiprakash Sawant, learned counsel for the second party workman and Ms. Geeta Raju, learned counsel for the first party.

ISSUE NO. 1 : The witness of the first party N. P. Selvan has stated in his cross-examination that :

> "The workman Mr. Salim Mohammed Hussain was not a party to the litigation before the Honourable Supreme Court and he is not governed by the judgement of the Honourable Supreme Court and for this reason he has not been regularized. There is nothing on record to show that the second party workman was a party in the writ petition before Honourable Supreme Court or that Honourable Supreme Court directed the first party to absorb the second party workman.

There is nothing on the record to show that the second party workman was a party in the writ petition before the Apex Court or that the Apex Court directed the first party to absorb him.

Mr. Jaiprakash Sawant learned counsel for the second party workman has frankly admitted that the second party workman has not been able to prove that his name was included in the writ petition or in the list filed with the writ petition or that the Apex Court directed the first party to absorb the second party workman.

Issue No. 1 is, therefore, decided against the second party workman.

ISSUE NO. 2 : Since Issue no. 1 is decided against the workman this issue is entirely redundant.

ISSUE NO. 3 : The workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G S. SARRAF, Presiding Officer

नई दिल्ली, 21 जनवरी, 2013

का. आ. 407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसोसियेटेड स्टोन इन्डस्ट्रीज (कोटा) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 1/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-29012/31/2003-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 194[illegible]). the Central Government hereby publishes the award (Ref. No. 1/2006) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Associated Stone Industries (Kota) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-29012/31/2003-IR (M)]
JOHAN TOPNO, Under Secy.

अनुबंध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान/

पीठासीन अधिकारी : श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या./केन्द्रीय/-1/2006

दिनांक स्थापित : 18-7-06

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-29012/31/2003-आई.आर/एम./दिनांक 25-1-2006

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

समरथ सिंह राजावत, पुत्र शिव सिंह,

2 ख-31, टीचर्स कोलोनी, महावीर नगर-III, कोटा (राजस्थान)

.....प्रार्थी श्रमिक

एवं

मैनेजर, एसोसियेटेड स्टोन इण्ड., रामगंजमण्डी,
जिला कोटा, राजस्थान .....अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री विनोद भटनागर

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी.के.जैन

अधिनिर्णय दिनांक : 7-11-2012

अधिनिर्णय

1. भारत सरकार, श्रम मंत्रालय नई दिल्ली के उक्त प्रासांगिक आदेश दि. 25-1-2006 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :

> "Whether the industrial dispute raised by Sh. Samarath Singh Rajawat S/o Sh. Shiv Singh against the management of Associated Stone Industries (K) Ltd. Ramganjmandi over alleged illegal termination from service is justified ? If so, to what relief the concerned workman is entitled ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना विधिवत जारी कर अवगत करवाया गया।

3. प्रार्थी कर्मकार की ओर से क्लेम स्टेटमेन्ट पेश किया गया जिसमें वर्णित किया गया कि प्रार्थी को 12-5-95 से अप्रार्थी द्वारा सेल्स रिप्रजेन्टेटिव (विक्रय प्रतिनिधि) के पद पर नियोजित किया गया। प्रार्थी ने अपना कार्य ईमानदारी व निष्ठापूर्वक किया। दि. 21-11-02 को बिना कोई कारण बताये व बिना कोई सूचना के प्रार्थी का उपस्थिति कार्ड सं. 16 को गायब कर पंच नहीं करने दिया गया तथा हाजिरी रजिस्टर में हस्ताक्षर नहीं करने दिये गये। इस प्रकार प्रार्थी को 21-11-02 से सेवा से पृथक कर दिया गया। प्रार्थी ने अप्रार्थी के यहाँ पुन: नौकरी पर लिये जाने हेतु कई चक्कर भी लगाये, अधिवक्ता के मार्फत नोटिस भी दिलवाये परन्तु अप्रार्थी ने प्रार्थी को ड्यूटी पर नहीं लिया। प्रार्थी को हटाना छंटनी की तारीफ में आता है एवं प्रार्थी द्वारा 12-5-95 से 20-11-02 तक लगातार कार्य किया गया है। प्रार्थी को हटाने से पहले धारा 25-एफ, जी, एच के प्रावधान की पालना भी नहीं की गयी है। अत: अपने क्लेम स्टेटमेन्ट के माध्यम से प्रार्थी ने पिछले सम्पूर्ण वेतन, परिलाभों व सेवा की निरन्तरता सहित सेवा में बहाल किये जाने के अनुतोष की मांग की है।

4. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें प्रार्थी को 12-5-95 से विक्रय प्रतिनिधि के पद पर सेवा में नियोजित किये जाने के तथ्य को स्वीकार किया गया व आगे कथन किया गया कि प्रार्थी अपने कार्य के प्रति लापरवाह था। प्रार्थी को सेवा-शर्तों के क्लॉज 7 के अनुसार एक माह का नोटिस देकर सेवा से विधिपूर्ण तरीके से पृथक किया गया। प्रार्थी, कर्मकार की परिधि में नहीं आता है। प्रार्थी का मामला छंटनी का भी नहीं है। अत: अपने जवाब के माध्यम से अप्रार्थी ने प्रार्थी का क्लेम स्टेटमेन्ट खारिज किये जाने की प्रार्थना की।

5. इसके पश्चात् साक्ष्य प्रार्थी में प्रार्थी समरथ सिंह स्वयं का शपथ-पत्र पेश हुआ। पत्रावली इसके बाद प्रार्थी की जिरह हेतु नियत की जाती रही एवं दि. 28-3-12 को भी प्रार्थी को जिरह हेतु अन्तिम अवसर दिया गया। इसके बाद 29-8-12 को भी प्रार्थी से जिरह हेतु अन्तिम अवसर दिया गया एवं आइंदा प्रार्थी के जिरह हेतु उपस्थित नहीं होने पर साक्ष्य बन्द माने जाने का आदेश दिया गया। आज की सुनवाई तिथि पर भी प्रार्थी उपस्थित नहीं है, उसके विधिक प्रतिनिधि उपस्थित हैं परन्तु उन्होंने प्रार्थी की अनुपस्थिति का कोई कारण प्रकट नहीं किया। उनके द्वारा यह अभिकथन किया गया कि उनके द्वारा प्रार्थी को सूचित कर दिया गया था।

6. औद्योगिक विवाद नियम 10-बी(8) के अनुसार किसी भी पक्षकार को साक्ष्य आदि प्रयोजन हेतु तीन ही अवसर दिये जाने व इन अवसरों के स्थगन की अवधि भी प्राय: सप्ताह भर की ही होगी, ऐसा उपबंधित है। हस्तगत मामले में अप्रार्थी द्वारा दि. 22-4-09 को क्लेम स्टेटमेन्ट का जवाब पेश करने के बाद से आज तक पत्रावली साक्ष्य प्रार्थी हेतु नियत की जाती रही है। इस प्रकार करीबन ढाई वर्ष का समय प्रार्थी को साक्ष्य हेतु प्राप्त हो चुका है एवं इस दरम्यान प्रार्थी द्वारा 26-4-10 को अपना शपथ-पत्र पेश किया गया। शपथ-पत्र पेश किये हुए भी करीबन ढाई वर्ष हो चुके हैं एवं इसके बावजूद भी प्रार्थी जिरह हेतु उपस्थित नहीं हुआ। अत: ऐसी परिस्थितियों में अब और स्थगन बिना किसी पर्याप्त कारण के दिये जाने का कोई आधार भी नहीं है। गत सुनवाई तिथि पर स्पष्ट कर दिया गया था कि

न्यायहित में एक और अन्तिम अवसर दिया जा रहा है कि आइंदा साक्ष्य पेश नहीं होने पर साक्ष्य स्वत: बन्द मानी जायेगी । अत: आज भी प्रार्थी के उपस्थित नहीं होने से प्रार्थी की जिरह एवं साक्ष्य बन्द की जाती है एवं कानूनन उसका शपथ-पत्र जिरह के अभाव में साक्ष्य में ग्राह्य नहीं होगा ।

7. अप्रार्थी के प्रतिनिधि ने भी प्रार्थी की साक्ष्य के अभाव में अपनी ओर से कोई साक्ष्य पेश नहीं करना चाहा व अपनी साक्ष्य बन्द की ।

8. चूँकि क्लेम स्टेटमेन्ट में वर्णित तथ्यों को प्रार्थी को अपनी साक्ष्य से साबित करना था परन्तु प्रार्थी कोई भी साक्ष्य पेश करने में विफल रहा है, यहाँ तक कि उसके द्वारा प्रस्तुत शपथ-पत्र भी जिरह के अभाव में साक्ष्य में ग्राह्य नहीं है । अत: यह आसानी से कहा जा सकता है कि वह क्लेम स्टेटमेन्ट में वर्णित तथ्यों को साक्ष्य से साबित करने में विफल रहा है एवं इन परिस्थितियों में वह कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासांगिक आदेश क्र. एल-29012/31/2003-आईआर (एम) दिनांक 25-1-06 के जरिये सम्प्रेषित निर्देश/विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक समरथ सिंह द्वारा प्रस्तुत क्लेम स्टेटमेन्ट में वर्णित तथ्यों को साक्ष्य से साबित करने में विफल रहने से वह किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 21 जनवरी, 2013

का. आ. 408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स उड़ीसा माइनिंग कॉरपोरेशन (उड़ीसा) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 8/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-2013 को प्राप्त हुआ था ।

[सं. एल-29011/77/2004-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2005) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Orissa Mining Corporation Ltd. (Orissa) and their workman, which was received by the Central Government on 11-1-2013.

[No. L-29011/77/2004-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT :

Shri J. SRIVASTAVA, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 8/2005

Date of Passing Order—26th December, 2012

BETWEEN :

The General Manager,
M/s. Orissa Mining Corporation Ltd.,
At./PO. Barbil, Orissa, Keonjhar

... 1st Party-Management

(And)

The General Secretary,
Orissa Mining Workers' Federation,
C/o. O.M.C. Ltd., OMC House,
Bhubaneswar, Orissa-751 001

... 2nd Party-Union

APPEARANCES :

M/s. M. R. Mohanty, Advocate : For the 1st Party-Management

M/s. B. C. Bastia, Advocate : For the 2nd Party-Union

ORDER

Case taken up today. Advocates for both the parties are present. The case is today fixed for cross examination of M.W.-1, but the 2nd Party-workman has moved a petition today before this Tribunal for withdrawal of the dispute on the ground that the Management Board of the 1st Party-Management has decided to regularize all the casual workers and as per decision of the Board the 1st Party-Management has already regularized some of the casual workers and also assured the 2nd Party-workman to regularize him after withdrawal of the present dispute. Accordingly he has sought leave of this Tribunal to permit him to withdraw the present dispute. The Advocate for the 1st Party-Management has no objection to the petition. Accordingly finding no legal hindrances in allowing the 2nd party-workman to withdraw the present dispute I allow him to withdraw the present case. His petition is allowed and the reference is decided as withdrawn and no-dispute award is passed in terms of the reference.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 जनवरी, 2013

का. आ. 409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट (संदर्भ संख्या 142/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/121/2007-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd January, 2013

S.O. 409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 142/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the management of State Bank of Mysore and their workman, which was received by the Central Government on 22-1-2013.

[No. L-12012/121/2007-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 8th January, 2013

Present : Shri S.N. Navalgund,
Presiding Officer

C.R. No. 142/2007

I Party	**II Party**
Sri Mohammed Kallemulla, S/o Kuthubidin Sahib, Garibi Quarters, Post : Kalkuni, Muluvulli Taluk, Mandya District.	The Chief Manager, (Admn. & Disciplinary Authority), State Bank of Mysore, Mysore Zonal Office, Mysore.

APPEARANCES

I Part	:	Shri N.M. Ganesh, Advocate
II Party	:	Shri Ramesh Upadhayay, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-Section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/121/2007-IR (B-I) dated 8-10-2007 for adjudication on the following schedule :

SCHEDULE

"Whethe the order of discharge from service with superannuation benefits imposed on Md. Kalemulla w.e.f. 16-12-99 by the management of State Bank of Mysore, is legal and justified? If not, to what relief the workman concerned is entitled?"

2. On receipt of the reference Registering it in CR 142/2007 when notices were issued to both the sides, Sh. K. Mohammed Kalemulla (hereinafter referred as I Party) and the Chief Manager, State Bank of Mysore (herein after referred as II Party) entered their appearance through their respective Advocates and the advocate for the I party filed his claim statement on 15-2-2008 and the II Party filed its Counter Statement on 16-7-2010.

3. After completion of the pleadings though there was no allegations in the claim statement the I party being denied of fair and proper opportunity in the Domestic Enquiry an issue was raised as to whether the Domestic Enquiry conducted against the I Party by the II Party is fair and proper as a preliminary issue. When the matter was posted for evidence of the II Party on the said Preliminary Issue on 9-11-2010 counsel for the II Party while producing the Enquiry File had taken time to examine the Enquiry Officer and on his request time was extended to 6-12-2010 and thereafter till 31-12-2010 and as on 31-12-2010 learned advocate appearing for the I Party submitted documents produced by the II Party may be exhibitd and arguments on Preliminary Issue may be heard dispensing with the evidence of the Enquiry Officer the enquiry file segregated into Eight in number in the list were marked as Ex M-1 to Ex. M-8 and then on 4-2-2011 hearing the arguments addressed by the learned advocates appearing for both the sides by order dated 8-2-2011, the Preliminary Issue came to be answered in the affirmative i.e. the Domestic Enquiry conducted against the I Party being fair and proper. Thereafter when the learned advocates were called upon to address their arguments on merits the learned advocate appearing for the I Party urged that the II Party which had taken the services of I Party as Water boy from 11-3-1981 after about 16 to 17 years gave an offer of appointment in the Bank on 2-6-1988 and after about six months issued a vague Charge Sheet on 7-1-1999 alleging that he has secured his appointment in the Bank as Peon on the basis of the falsified transfer certificate No. 1/83-84 dated 11-5-1993 purportedly from Government Urudu Higher Primary School, Kalkuni, Mandya District and statement of marks for having passed by VIII std., purportedly issued by Government Urudu Higher Primary School, Kalkuni, Mandya District amounting to major misconduct under 19.5(m) of Bi-partite Settlement if proved punishable under 19.6 of Bi-partite Settlement and without producing any

evidence to substantiate the said charge on the discussion made between the Enquiry Officer and the Defence Representative the Enquiry Officer gave finding the charge being proved without any evidence as such the said finding is baseless, perverse and unsustainable and consequently the punishment imposed on such perverse Enquiry Report of discharging the I Party from Service with superannuation benefits is also unsustainable. Thus, he urged to set aside the Enquiry Finding and the punishment imposed against the I Party. Inter alia, the learned advocate appearing for the II Party taking me through the proceedings of the Enquiry submitted that practically charge being admitted there is no reason to say enquiry finding being perverse and urged to reject the reference.

4. In view of the facts narrated by me above since this tribunal has found the Domestic Enquiry was fair and proper the only points now remains for my consideration are :

1. Whether Management proved the charge levelled against the I Party in the Domestic Enquiry ?

2. If so, whether the punishment imposed is proportionate to the said proved charge ?

3. What order ?

5. On appreciation of the pleadings, the materials available in the enquiry file with the arguments addressed learned advocates appearing for both the sides my finding on Point No. 1 is in the Negative, No.2 as does not survive and No. 3 as per final Order for the following reasons :

REASONS

6. It is borne out from the enquiry file covered under Ex. M-1 to Ex. M-8 the detailed description of which are narrated in the Annexure, it is indicated on 9-1-1999 the Chief Manager/II Party served Charge Sheet dated 7-1-1999 on the I Party which reads as under :

"Charge Sheet"

It is reported against you that you have committed the following act in connection with your securing employment in the Bank.

CHANGE-I

You have secured your appointment in the Bank as Peon on the basis of the following falsified certificates :

(a) Transfer Certificate .No. 1/83-84 dated 11-5-93 purportedly from Government Urdu Higher Primary School, Kalkuni, Mandya Dist.

(b) Statement of marks for having passed VIII standard examination purportedly issued by Government Urdu Higher Primary School, Kalkuni, Mandya District.

02. The above acts alleged against you amount to major misconduct under 19.5(m) of Bipartite Settlement and if proved will be punishable in terms of provisions under 19.6 of the Bi-partite settlement.

03. You are hereby advised to submit your written reply to the Charge Sheet within 15 days of receipt of this Charge Sheet. Please note that we will be free to proceed further in the matter after the stipulated date without reference to you against in the matter, in case the reply is not received in aforesaid.

04. Please acknowledge receipt of this Charge sheet by signing the duplicate.

Sd/-
Chief Manager,
Administration—ZO, MZ"

7. Consequent to the service of the said charge sheet on 14-5-1999 the Enquiry Officer held the preliminary hearing and on the request of CSE/I Party adjourned the enquiry to 26-5-1999 with instruction to the CSE to bring his Defence Representative on that day failing which the enquiry will be proceeded with without any further communication. Then on 26-5-1999 since the CSE expressed his inability to bring his Defence Representative he adjourned it to 8-6-1999 enabling him to bring his Defence Representative. Again on 8-6-1999 since the CSE/I party again expressed his inability to bring the Defence Representative he gave one more opportunity to bring the Defence Representative and adjourned to 17-6-1999. Thereafter he resumed the enquiry on 22-6-1999 and on that day the CSE appeared with Sh. G Mohan as his Defence Representative and the said Defence Representative raised a preliminary objection that in the charge falsified certificate like Transfer Certificate No. 1/83-84 dated 11-5-1993 being mentioned and as the CSE has never submitted such Transfer Certificate dated 11-5-1993 the charge itself is not sustainable and as such the proceedings be dropped and against that on the submission of the Presenting Officer that the year of the Transfer Certificate mentioning as 1993 is a typographical mistake instead of 1983 as such there is no substance in the Preliminary Objection, the Enquiry Officer accepting the submission made by the Presenting Officer rejected the request of the DR and noting the protest by the Defence Representative he called upon the Presenting Officer to present his case. Then the Defence Representative with permission of Enquiry Officer volunteered that his intention of raising the objections to the Charge Sheet is certainly with a view to bring before the forum that an incorrect charge sheet cannot be either proved or disproved and however he submits that the CSE had passed VII Std. Public Examination and

discontinued his studies further and took up the SSLC examination as a Private Candidate later on and with regard to the allegations that he has submitted VIII Std. the error has been crept in advertently and he has already regretted for the same hence considering the charge sheet is not properly framed and CSE has accepted certain lapses in view of the financial burden may cause on the profits of the bank he appeals to take a lenient view and request to drop further proceedings in the matter, the Enquiry Officer asking the Presenting Officer to respond when he stated "since the CSE has accepted through Defence Representative he has passed VII Std. examination only he is of the view that there is no necessity to present the case further by supported documents and he will be submitting his detailed arguments in his summing up report", the Enquiry Officer asking CSE upto what standard he has studied when he answered he has passed 7th Std. Public Examination called upon him to submit any thing that he feels like, he submitted :

> "Sir, I am working in this esteemed Bank since 1977 as a temporary peon. I have worked in several branch offices for the past 22 years. My record at all the offices/branches of the Bank is clean and unblemished. I have a big family comprising of my aged parents, wife and 4 daughters. I do not have any other source of income apart from what the Bank provides to me. I have to live or die only with the income what I get from the Bank. I have to see the welfare of my family members and also it will be my onus to see that all my four daughters get married of. Therefore, I humbly request you to take a lenient view and condone the lapse if any on my part and drop further proceedings"

then the Enquiry Officer observing in view of what has been represented by Defence Representative, Presenting Officer and CSE he find no necessity to continue with the proceedings further closed the enquiry advising the Presenting Officer to submit his summing up report within 10 days and Defence Representative to submit his summing up report within 10 days from the date of receipt of summing up report of P.O. and after receipt of summing up report from both the sides submitted his Enquiry Finding dated 12-8-1999 charge being conclusively proved.

8. At the outset, I may say on plane reading of the Charge Sheet even accepting that while mentioning the year of the Transfer Certificate No. 1/83-84 as '93' in the charge sheet by typographical error instead of '83' it cannot be made out what was the role of CSE/I Party in falsifying them. In sub-para (b) of the charge it being mentioned as :

> "Statement of marks for having passed VIII standard examination purportedly issued by Government Urdu Higher Primary School, Kalkuni, Mandya District"

it appears that the Disciplinary Authority means to say that he had presented statement of marks as to 8th Std. Examination. For this an explanation has been given in the enquiry that whatever statement of marks was given to him by the Government Urdu Higher Primary School, Kalkuni, Mandya District was presented by him at the time of his appointment and there in advertently the School Authorities instead of mentioning the standard passed as 'VII' might have mentioned as VIII and that since the qualification required for his appointment was 'VII' public examination pass he had no necessity to make it read that marks card having passed VIII Std. This explanation given by the CSE is quite possible as such in the absence of any evidence of the School Authorities that the statement of marks issued by them for passing VII Std. to CSE has been interpolated to read as VIII Std., it is not possible to come to a conclusion the said statement to marks was falsified by the CSE/I Party making it to read as VIII Std. in order to secure the appointment. The discussion between the Enquiry Officer and the Defence Representative quoted by me above cannot be used as an admission on behalf of the CSE he having falsified the statement of marks in order to obtain appointment in the II Party Bank. Even the Transfer Certificate and Statement of Marks referred to in the charge sheet purported to have been furnished by the CSE at the time of his appointment being not taken on record of the enquiry they are not available for the court to even to have a look towards them to say that the statement of marks of the VII Std. was made to read as of VIII Std. Under these circumstances, I am of the considered view the finding of the Enquiry Officer is baseless and his conclusion that the statements made by the Defence Representative on behalf of CSE amounts to admission of the charge is not proper as such his finding charge being conclusively proved is baseless and preverse. Accordingly, I arrive at the conclusion of answering the Point No. 1 in the Negative.

9. In view of my finding on Point No. 1 in the Negative Point No. 2 do not survive for consideration. Since the charge issued itself was vague and the finding of the Enquiry Officer is found perverse besides the same is not sustainable the punishment imposed on such a perverse Enquiry Report also do not sustain. Since on such a vague charge sheet and perverse finding the poor I party workman being discharged from service without any fault on his part he is entitle for Reinstatement into service, Continuity of Service, full backwages and all other consequential benefits that he would have received in the absence of the impugned punishment imposed on him. In the result, I pass the following Order :

ORDER

The reference is allowed holding that the order of discharge from service imposed on Sh. Mohammed

Kalemmula by the management of State Bank of Mysore is illegal and unjustified and that he is entitle for Reinstatement into service with full backwages, continuity of service and all other conseqential benefits that he would have received in the absence of the impugned punishment imposed on him. No order as to costs.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

Documents exhibited by Consent of both parties :

Ex M-1 — Office Copy of Charge Sheet dated 7-1-1999

Ex M-2 — Original Enquiry Proceedings.

Ex M-3 — Original Written Brief of the Presenting Officer.

Ex M-4 — Original Written Brief of the Defence Representative.

Ex M-5 — Office copy of Show Cause Notice dated 1-10-1999.

Ex M-6 — Office Copy of the Order of Disciplinary Authority dated 16-12-1999.

Ex M-7 — Original Appeal dated 15-2-2000 of the I Party.

Ex M-8 — Office copy of the Order of the Appellate Authority dated 17-8-2000.

नई दिल्ली, 22 जनवरी, 2013

का. आ. 410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 120/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/401/99-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd January, 2013

S.O. 410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the *management* of Karnataka Bank and their workmen, which was received by the Central Government on 22-1-2013.

[No. L-12011/401/99-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 24th December, 2012

Present : Shri S.N. NAVALGUND, Presiding Officer

C.R. No. 120/1999

I Party	**II Party**
Shri M.Gangadhara, Prema Sadana, Vasanth Nagar, Maroli, Mangalore-575 005	The Chairman, Karnataka Bank Limited, Head Office, Mangalore-575 003.

APPEARANCES :

I Party : Shri M. Keshavayya, Advocate

II Party : Shri Ramesh Upadhayay, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of sub-section (1) of sub-section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12011/401/99-IR(B-I) dated 16-11-1999 for adjudication on the following schedule :

SCHDEULE

"Whether Sri M. Gangadhara, Driver whose services were utilized by the Assistant General Manager/ Regional Manager of Karnataka Bank Limited, Regional Office, Mangalore, was a workman under Section 2(S) of the Industrial Disputes Act, 1947 and there exists master and servant relationship between the Karnataka Bank Ltd. and Sri M. Gangadhara ?"

2. After receipt of the reference and registering it in CR 120/1999 persuant to the notices issued by this Tribunal the I party workman as well as the II Party *Management* entered their appearance through their respective advocates and I party filed his claim statement on 12-3-2003 whereas the II party filed its counter statement on 10-3-2005. After the completion of the pleadings when the I Party workman was called upon the substantiate that he was a workman and there exist master and servant relationship between him and the Bank while filing his affidavit dated 31-5-2005 while examining himself as WW1 did not get any documents exhibited and subjected himself for cross-examination by the learned advocate appearing

for the II party and closed his side. There upon the learned advocate appearing for the II party while filing the affidavit of Sh. B. Dinesh Bhat, Manager, Head Office, Karnataka Bank Limited, Mangalore examining him on oath as MW1 got exhibited Photostat copies of the letter addressed by Second Party to First Party dated 12-3-1999 wherein it is intimated that he being neither appointed nor terminated by the bank the question of confirming and continuing him in the bank as Driver does not arise; letter addressed by Deputy General Manager to one Mr. Chandrahas appointing him as "Probationary Attender" dated 5-4-2002 and Service Condition of the Bank Employees as Ex. M1 to Ex M3. Subsequently, the I party with permission filed his another affidavit on 22-4-2010 for the purpose of getting exhibited the documents produced by him along with the claim statement and also a document that he got produced from the II Party and by examining himself on oath on 23-6-2010 got exhibited Photostat copies of the letters said to have been addressed by him to the Management dated 18-2-1997, 31-10-1998, 23-12-1998; Postal neither seasonal nor casual since the officials were using the said vehicles regularly to visit 55 branches spread over the districts of Dakshina Kannada, Udupi, Kasargod, Calicut and Kannur to contact depositors, borrowers in connection with recovery of NPAs, Bad and Doubtful advances etc. He has also asserted the monthly salaries, out station allowances etc., were being paid to him regularly making entries in the Registers of the Regional Office and also obtaining his signatures on the back of the Debit Slips as such there exists their Relationship of Servant and Master between him and the II party.

3. Inter alia, in the Counter Statement filed by the II party it is contended that it provides Motor Cars for the use of the Executives of the Bank and if for any good reason the Regional Manager/Assistant General Manager not willing/able to drive the vehicle an allowance for meeting the expenditure in this connection was permitted to be paid to him to facilitate him to make suitable alternative arrangement and the amount so re-imbursed to him was initially fixed at Rs. 500.00 p.m. and subsequently raised to Rs. 1,500 and Rs. 2,000.00 p.m. It is further asserted the Regional Manager/Assistant General Manager might have in their individual capacity engaged the I Party as driver as such the II Party bank has no concern with the I party as such the claim of the I party that he is a workman of the Bank and there exists Servant and Master Relationship between him and the Bank has no force.

4. The defintion clause in the ID Act, 1947 at Section 2(s) states 'workman' means :

> "any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connector with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrative capacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature"

In this case on hand the claim of the I Party workman that since from 1-4-1990 till 19-9-1998 he drove the vehicles of the II party attached to its Regional Office, Mangalore while Sh. G Somaiah, Sh. K. Venkataramana, Sh. Venkataraj, Sh. V. Madhusudhan were working as Principal Officers is not seriously challenged and it is claim that those officers might have engaged his services as Driver on their own privately as such there exists no relationship of Master and Servant between the Bank and the I party workman. The II party in order to substantiate its contention that for the Officers who were not willing or not able to drive the vehicle were provided with an allowance initially @ Rs. 500.00 p.m. raised it to Rs. 1500.00 and Rs. 2000.00 respectivley, failed to place on record any documentary evidence in that regard. If at all as per the rules or the provision made by the II Party the Executives of the Bank were to drive the vehicle provided to them by themselves and only for any good reason if they are not willing or not able to drive a provision for allowance for reimbursement of Rs. 500.00 initially and by Rs. 1500.00 and Rs. 2000.00 was made there would have been some document in that regard. On the other hand the amount paid to the driver being mentioned in the ledger the extract of which is produced at Ex W-6 as "To Car Maintenance allowance RN for particular month" and in one place it is described "To amount paid to Gangadhara Driver in connection with the Platinum Jubilee for 5 days as a Special Case". In this document produced by the II Party itself on the demand made by I Party 60 entries find place between 3-5-1990 to 23-5-1998 as Bata for over night stay outside Mangalore ranging for one day to 10 days at a time. If at all the concerned official were to appoint the Driver on their own being paid with specific allowance in that regard and

utilized his services there was no reason for the Bank to make payment for his/their over night stay outside Mangalore. This evidence do suggested that the II Party allowed the officials to whom the vehicles were provided to engage the services of Driver initially on payment of Rs. 500.00 p.m. and raised it to Rs. 1500.00 and Rs. 2000.00 respectively and also paid them Bata whenever they were taken to the stations outside Mangalore for their over night stay in such places. Under the circumstances, I have no hesitation to hold that Sh. M. Gangadhara, Driver whose services were utilized by Assistant General Manager/Regional Manager, Regional Office, Mangalore was a workman as defined under Section 2(S) of ID Act and there exist Servant and Master Relationship between them and the contention of the II party that he might have been privately engaged by the concerned Assistant General Manager/Regional Manager, Regional Office, Mangalore out of the separate allowance paid to them in that regard is benefit of any merits. In this result, I pass the following :

ORDER

The reference is allowed holding that Sh. M. Gangadhara, Driver whose services were utilized by the Assistant General Manager/Regional Manager, Regional Office, Mangalore, is a workman as defined under Section 2(s) of I.D. Act and there exists Master and Servant Relationship between Sh. M. Gangadhara and Karnataka Bank Limited.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

List of witnesses examined before the Enquiry Officer :

MW 1 — Sh. B. Dinesh Bhat, Manager

WW 1 — Sh. M. Gangadhara, I Party Workman

Documents exhibited on behalf of the Management :

Ex. M-1 — Copy of the letter of Second Party to I Party dated 12-3-1999

Ex. M-2 — Letter of Second Party to Chandrahas dated 5-4-2002.

Ex. M-3 — Copy of Bi-partite Settlement

Ex. M-4 — Certified copy of the Extract of Driving Licence No. FDL-7879/67-68/RDL. G3/P-34 issued by the Office of the Regional Transport Officer, Mangalore, D.K. Karnataka State dated 23-7-2010.

Ex. M-5 — Copy of the Driving Licence of the I Party issued by the Licensing Authority, Mangalore, DK.

Documents exhibited on behalf of the I Party Workman :

Ex. W-1 — Copy of the letter of I Party to II Party dated 18-2-1997

Ex. W-2 — Copy of the letter of I party to II party dated 31-10-1998

Ex. W-3 — Copy of the letter of I Party to II Party dated 10-12-1998

Ex. W-4 — Copy of the letter of I Party to II party dated 23-12-1998

Ex. W-4(a)— Copy of RPAD Acknowledgment

Ex. W-5 — Birth Certificate

Ex. W-6 — Copy of Pages of Subsidiary Ledger

Ex. W-7 — Copy of the Application filed before ALC(C), Mangalore dated 16-8-1999

Ex. W-8 — Copy of letter of Assistant General Manager to Regional Manager dated 18-2-1997.

नई दिल्ली, 22 जनवरी, 2013

का. आ. 411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 68/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/101/2008-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd January, 2013

S.O. 411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 22-1-2013.

[No. L-12012/101/2008-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present : Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court,
Bhubaneswar

Industrial Dispute Case No. 68/2008

Date of Passing Award—5th December, 2012

Between :

The Asstt. General Manager,
State Bank of India, Bapujinagar Branch,
Distt. Khurda, Bhubaneswar,
(Orissa) ... 1st Party—Management

AND

Their workman Sri Promod Kumar Rath,
Qr. No. VR-5/1, Kharvela Nagar,
Unit-3, Bhubaneswar
(Orissa) ... 2nd Party—Workman

APPEARANCES :

Shri Alok Das, Authorized Representative	:	For the 1st Party-Management
None	:	For the 2nd Party-Workman

AWARD

1. The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 vide Letter No. L-12012/101/2008-IR(B-I), dated 7-10-2008 to this Tribunal for adjudication to the following effect :

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Promod Kumar Rath w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? To what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger in January, 1990 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party–Management without any written communication or payment of compensation. The 1st Party–Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 25-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party–workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party–Management. In the said dispute the failure report was sent by the Asstt. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party–workman is appearing at Sl. No. 27 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asstt. Labour Commissioner (Central) while conciliating the Individual dispute disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party–workman that he had joined the Bank in January, 1990 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party–workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/ daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party–workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party–workman has never challenged the implementation of the settlement which has now gained finality. It is further

submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Rath had allegedly been terminated in March, 1991 his claim has become stale by raising the dispute after sixteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed :

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for 240 days as enumerated under section 25-F of the Industrial Disputes Act ?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Pramod Kumar Rath w.e.f. 30-9-2004 is fair, legal and justified?

4. To what relief is the workman concerned entitled ?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party–Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W. -1 and filed documents marked as Ext. A to Ext. J in refutation of the claim of the 2nd Party workman.

FINDINGS

Issue No. 1

7. A specific plea has been raised by the 1st Party Management that a group of 125 employees including the 2nd Party workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case :

> Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to ?

8. The name of the 2nd Party workman appears at Sl. No. 27 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st party Management.

Issue No. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in January, 1990 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party Management during the above period. The 1st Party Management, on the other had, has alleged that the 2nd Party workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies

..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch since March, 1991". The 2nd Party workman has to disprove the evidence led by the 1st Party Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

Issue No. 3

10. Since the 2nd Party workman could not prove that he had rendered 240 days continuous service under the 1st Party Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party workman has not filed any letter of appointment or proof of having rendered service under the 1st Party Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Promod Kumar Rath with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party workman.

Issue No. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 जनवरी, 2013

का. आ. 412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेशवर के पंचाट (संदर्भ संख्या 30/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-1-2013 को प्राप्त हुआ था।

[सं. एल-12012/19/2008-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd January, 2013

S.O. 412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 22-1-2013.

[No. L-12012/19/2008-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

SHRI J. SRIVASTAVA, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 30/2008

Date of Passing Award—4th January, 2013

BETWEEN:

The Asst. General Manager,
State Bank of India,
Bhubaneswar Main Branch,
Bhubaneswar Dist. Khurda,
Bhubaneswar, (Orissa) ... 1st Party-Management

(And)

Their workman Sri Rabinarayan Sethi,
Qr. No. VR-5/1,
Kharvela Nagar, Unit-3,
Bhubaneswar, (Orissa) ... 2nd Party-Workman

APPEARANCES :

Shri Alok Das, : For the 1st Party-Management
Authorized Representative

None : For the 2nd Party-Workman

AWARD

1. The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/19/2008-IR(B-I), dated 2-6-2008 to this Tribunal for adjudication to the following effect :

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Rabindra Sethi w.e.f. 30-9-2004 is fair, legal and justified ? To what relief is the workman concerned entitled ?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 1-7-1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 28-2-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Managment in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 41 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank 1-7-1988 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank not he has completed 240 days of contiuous service in any calendar year preceding the date of his alleged termination. In order to given an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appiointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitioners before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Sethi had allegedly been terminated in November, 1989 his claim has become stale by raising the dispute after fifteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed :—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified ?
2. Whether the workman has worked for 240 days as enumerated under section 25-F of the *Industrial Disputes Act* ?

3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating the services of Shri Rabindra Sethi with effect from 30-9-2004 without complying the provisions of the I.D. Act, 1947 is legal and justified ?

4. To what relief is the workman concerned entitled ?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1 :

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. This dispute as referred to I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case :

> "Whether the action of the Management of State Bank of India, Orissa Circle Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified ? If not, what relief the workmen are entitled to ?

8. The name of the 2nd party-workman appears at Sl. No. 41 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 1-7-1988 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant workman was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch since November, 1989." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that the had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage

employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Rabindra Sethi with effect from 30-9-2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 जनवरी, 2013

का. आ. 413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लोर्ड कृष्णा बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरुणाकुलम् के पंचाट (संदर्भ संख्या 8/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/24/2010-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd January, 2013

S.O. 413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the management of Lord Krishna Bank Ltd. and their workmen, which was received by the Central Government on 22-1-2013.

[No. L-12011/24/2010-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri D. SREEVALLABHAN, B. SC., LL.B., Presiding Officer

(Thursday the 29th day of November, 2012)

I.D. 8/2011

Union : The General Secretary,
Lord Krishna Bank Workers Organisation,
48/102, Hari Nivas,
Thannickal Elamakkara,
Kochi (Kerala)-682 026

By Adv. Shri. T. C. Krishna

Management: Dy. Vice-President,
Lord Krishna Bank Limited,
Registered & Admn. Office,
Indian Express Building, Kaloor,
Kochi (Kerala)-17

By Adv. Shri Saji Varghese

This case coming up for final hearing on 29-11-2012 and this Tribunal-cum-Labour Court on the same day passed the following :—

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-12011/24/2010-IR (B-I) dated 8-3-2011 referred the following industrial dispute to this tribunal for adjudication :

> "Whether the action of the management of Lord Krishna Bank (now HDFC Bank) in imposing a penalty of stoppage of one increment with cumulative effect on Shri. Ganesh P. Naik, Driver-cum-Sub-Staff, is legal and justified ? To what relief the workman is entitled ?"

2. When the case stood posted for preliminary hearing on the question as to the validity of the enquiry it was submitted by the learned counsel for both sides that there is chance for settlement and thereby the case was posted in the Lok Adalat to 14-11-2012. The case was settled on that day and afterwards compromise petition was filed jointly by the union and the management. The compromise is accepted and hence an award can be passed in terms of the compromise.

In the result an award is passed in terms of the compromise and it will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of November, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

I. D. No. 8 of 2011

The matter was taken up in Lok Adalat and the parties agreed to settle the dispute of the following terms :

The above Industrial Dispute has been raised by the Lord Krishna Workers Organization challenging the action of the management in imposing a penalty of stoppage of one increment with cumulative effect on Sri. Ganesh P. Naik, Driver-cum-Sub Staff. The matter was taken up in Lok Adalat and after negotiations, the parties have decided to settle the dispute on the following terms :

1. Management agrees that the punishment imposed on the worker will continue to be in force till 13-1-2013 and the Union and worker agrees to accept the same.

2. The workman Sri. Ganesh P. Naik will be placed in the basic pay of Rs. 9800 with effect from 13-1-2013, the time when his next increment is due reckoning the punishment imposed as stoppage of one increment without cumulative effect.

3. The worker Sri. Ganesh P. Naik will not be entitled for arrears of wages for the period till 13th January 2013 and no PF contribution will be made for that period, consequent to punishment imposed.

4. There shall be no further claim of whatsoever nature upon this substitution of punishment and shall not raise any further ID or dispute or claim of whatsoever nature in this regard in the future and this is full and final to the entire satisfaction of both the parties.

Agreeing to the above terms both parties have signed the Memorandum of Settlement.

Dated this the 27th day of November, 2012.

For HDFC BANK LTD.

Sd/-
Dy. Vice President

MANAGEMENT

Sd/-
UNION

Sd/-
Counsel for Union

Sd/-
Counsel for Management

MEDIATOR

Sd/-
D. SREEVALLABHAN, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसोसिएटेड स्टोन इन्डस्ट्रीज, कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 111/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-29012/14/2005-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2013

S.O. 414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 111/2005) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Associated Stone Industries (Kota) and their workman, which was received by the Central Government on 21-1-2013.

[No. L-29012/14/2005-IR (M)]
JOHAN TOPNO, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 111/2005

श्री एन. के. पुरोहित, पीठासीन अधिकारी

रेफरेन्स नं.-L-29012/14/2005-IR (M) दिनांक 2-9-2005

Sh. Tej Karan,
S/o Bihari Lal,
C/o Secy., Pathar Khan Kamgar Union (HMS),
Chhawani Bengali Colony,
Kota,
(Rajasthan)

V/s

Manager,
M/s. Associated Stone Industries, Kota
P.O. Ramganjmandi,
Dist. Kota,
(Rajasthan)

प्रार्थी की तरफ से : श्री कपिल शर्मा

अप्रार्थी की तरफ से : श्री आर. सी. पापरीवाल

पंचाट

दिनांक : 26-11-2012

1. केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 10 की उपधारा के खण्ड (घ) के प्रावधानों के अन्तर्गत उक्त आदेश दिनांक 2-9-2005 के द्वारा न्यायनिर्णयन हेतु प्रेषित किया गया था ।

"Whether the action of the management of M/s. Associated Stone Industries (Kota) Ltd. Ramganjmandi, Dist. Kota (Raj.) in terminating the services of workman Sh. Tej Karan S/o Sh. Bihari Lal is legal and justified ? If not, to what relief the workman is entitled to and from which date ?"

2. प्रार्थी ने दिनांक 19-12-2005 को अपना स्टेटमैन्ट ऑफ क्लेम प्रस्तुत कर कहा है कि उसने अप्रार्थी के यहां दिनांक 23-11-1984 से 19-5-2003 तक 'स्टोन कटर' का कार्य किया है उसे बिना कोई आरोप पत्र व जाँच के तथा औद्योगिक विवाद अधिनियम की धारा 25F, G एवं H के प्रावधानों की अवहेलना करते हुए तथा नैसर्गिक न्याय के सिद्धान्तों की अवहेलना करते हुए सेवा से पृथक कर दिया गया है । अत: समस्त लाभों के साथ सेवा में बहाल किया जावे ।

3. प्रार्थी के क्लेम को अस्वीकार करते हुए अप्रार्थी ने जवाब में कहा है कि अप्रार्थी बिना किसी सूचना व अवकाश की स्वीकृति के कार्य से दिनांक 27-5-2003 से अनुपस्थित रहा इसलिए दिनांक 20-11-2003 को सेवा मुक्ति नियमानुसार की गई है । औद्योगिक विवाद अधिनियम की धारा 25F, G एवं H के प्रावधान प्रार्थी के मामले में लागू नहीं होते । अत: प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

4. जाँच की ऋजुता (fairness) पर बहस की स्टेज पर दोनों पक्ष के मध्य विवाद के सन्दर्भ में हुए समझौते की एक प्रति प्रार्थी के द्वारा दिनांक 7-11-2012 को पेश की गई ।

5. दोनों पक्ष के प्रतिनिधिगण ने प्रार्थी एवं अप्रार्थी के मध्य हुए समझौते की शर्तों के अनुसार पंचाट पारित करने का अनुरोध किया ।

6. प्रस्तुत समझौते के अनुसार समझौते की शर्तें निम्न प्रकार हैं :

(i) यह कि प्रथम पक्ष प्रार्थी अपने सेवामुक्ति विवाद जो केस नं. CGIT-111/2005 से केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर में लम्बित है को समाप्त करने हेतु सहमत है तथा अप्रार्थी द्वितीय पक्ष उसे इसके एवज में 75,000 रुपये अक्षरे पिचहत्तर हजार रुपये का भुगतान करेगा । द्वितीय पक्ष विपक्षी ने 75,000 रुपये का भुगतान आज दिनांक 7-11-2012 को जर्ये चेक नं. 460319 दिनांक 28-8-2012 द्वारा कर दिया जिसे प्रथम पक्ष प्रार्थी ने स्वीकार किया ।

(ii) यह कि इस समझौते के पश्चात प्रथम पक्ष को सेवा सम्बन्धी कोई हक व अधिकार द्वितीय पक्ष एसोसिएटेड स्टोन इण्डिया कोटा लि. के यहाँ नही रहेगा । प्रार्थी द्वारा अपने सेवा से पृथक किये जाने सम्बन्धी अन्य कोई वाद किसी न्यायालय या अधिकरण में पेश कर रखा हो तो द्वितीय पक्ष इस समझौते कि प्रति सम्बन्धित न्यायालय अधिकरण में प्रस्तुत कर उसे समाप्त करा सकेंगें ।

(iii) यह कि उक्त राशि के अलावा प्रार्थी को मिलने वाले कानूनी देय लाभ प्रोविडेन्ट फण्ड, ग्रेज्युटी व छुट्टियों का वेतन का भुगतान नियमानुसार द्वितीय पक्ष प्रथम पक्ष को करेगा ।

(iv) यह कि प्रथम पक्ष ने यह समझौता व उसके तहत मिली राशि व अन्य शर्तें आदि को Reasonable व Fair समझा एवं माना है और बिना किसी दबाव के स्वस्थचित से इस समझौते को स्वीकार किया है ।

7. प्रार्थी एवं उसके प्रतिनिधि ने समझौते की शर्तों के अनुरूप 75,000 रुपये की राशि का चैक अप्रार्थी से प्राप्त करना स्वीकार किया है । समझौते की शर्तों के अनुसार प्रार्थी नियमानुसार देय प्रोविडेन्ट फण्ड, ग्रेज्युटी व छुट्टियों का वेतन अप्रार्थी से प्राप्त करने का अधिकारी होगा । अत: न्यायनिर्णयन हेतु प्रेषित निर्देश का निस्तारण दोनों पक्ष के मध्य हुए समझौते की शर्तों के आधार पर किया जाता है व पंचाट तद्नुसार पारित किया जाता है ।

8. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम, 1947 की धारा 17(1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे ।

एन. के. पुरोहित, पीठासीन अधिकारी

नई दिल्ली, 23 जनवरी, 2013

का. आ. 415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अरूण

कंस्ट्रक्सन सब-कौनट्रेक्टर मैसर्स जी एस अटवाल (उड़ीसा) के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 50/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-29012/12/2011-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2013

S.O. 415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Arun Construction Sub-Contractor M/s G. S. Atwal (Orissa) and their workman, which was received by the Central Government on 21-1-2013.

[No. L-29012/12/2011-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

SHRI J. SRIVASTAVA, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 50/2012

Date of Passing Order—2nd January, 2013

BETWEEN:

M/s. Arun Construction,
Sub-contractor of M/s. G. S. Atwal,
At. Kanehipur, P.O. Jajpur Road,
Dt. Jajpur-755 019, Orrisa.

M/s. G. S. Atwal,
Contractor of Sukinda Chromite Mines,
At./P.O. Kalarangiatta,
Ps. Kaliapani, Jajpur ... 1st Party-Management

(And)

Shri Bijay Kumar Mahanta,
C/o. Ratha Mahanta,
At. Karkhari, P.O. Monuabil,
Ps. Kankadahada, Distt. Dhenkanal,
Orissa ... 2nd Party-Workman

APPEARANCES :

None : For the 1st Party-Management

None : For himself -2nd Party-Workman

ORDER

Case taken up today. Both the parties are absent. The case is today fixed for filing of statement of claim by the 2nd Party-workman, but no statement of claim has been filed despite sending two registered notices to him on 27-9-2012 and 6-12-2012. Hence it appears that the 2nd Party-workman is not interested to proceed with the case any further. It might be that the dispute has been settled amicably between the parties out of the court. In the circumstances the case does not deserve to be kept pending any longer since a period of nearly eight months has expired and no dispute award is to passed in the case. Accordingly no-dispute award is passed in the case.

2. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम (मुम्बई) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई नं.-2 के पंचाट (संदर्भ संख्या 89/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-30012/6/2002-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2013

S.O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2002) of the Central Government Industrial Tribunal/Labour Court, Mumbai No.-2 now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Petroleum Corporation Ltd. (Mumbai) and their workman, which was received by the Central Government on 21-1-2013.

[No. L-30012/6/2002-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/89 of 2002

Employers in relation to the management of Hindustan Petroleum Corporation Ltd.

The General Manager,
Hindustan Petroleum Corporation Ltd.,
Hindustan Bhavan,
Ballard Estate,
Mumbai-400 038

AND

Their Workmen

The General Secretary,
Petroleum Employees Union,
C/o. Shri M. J. Rathod,
Type B-3, Building No. 2,
Sector-4, 4th Floor,
Room No. 3 & 4, Vashi,
Navi Mumbai-400 703

APPEARANCES :

For the Employer : Ms. Nandini Menon, Advocate

For the Workman : Mr. J. H. Sawant, Advocate

Mumbai, dated the 27th September, 2012

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No. L-30012/6/2002-IR(M), dated 13-11-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of Hindustan Petroleum Corporation Ltd., Mahul Refinery, Mumbai in terminating the services of Shri M. J. Rathod, Bulk Operator w.e.f. 18-5-2001 is legal and justified ? If not, what relief the workman concerned is entitled to ?"

2. The second party was the employee of the first party. It is the case of the first party that on 23-7-1996, while second party was on duty from 3.00 p.m. to 11.00 p.m. he was supposed to record temperature of the MTO Product at the TTL Gantry. According to them the workman recorded temperature of the MTO product as 26°C while filling up tank truck number MCU-588 deployed by the Saurashtra Colour Co. Before that the temperature was 28°C at 5.10 p.m. and it was to be maintained for next two hours. The workman was Bulk Operator and was required to check the temperature after every two hours. When the said truck driver came to Shri Raj Kumar who was the trainee officer on duty at the relevant time, he sent the driver back to the workman with instruction to change the figure of temperature to 27°C. It is alleged that the second party workman refused to do so and also threatened the trainee officer Raj Kumar to face dire consequences in case the figure of temperature is changed. According to first party, trainee officer Shri Raj Kumar changed the temperature from 26°C to 27°C to which he was authorized to. After obtaining the signature Shri Raj Kumar, truck driver had shown the invoice to the second party workman who was bulk operator and loader of the said truck. It is alleged that when second party saw Mr. Raj Kumar has changed the figure to 27° Celsius the second party snatched the invoice from the driver and *turned* towards Shri Raj Kumar with wild gestures. It is alleged that the second party workman dropped the intercom. set from the table with a bang and slapped Shri Raj Kumar on his right cheek. The said incident took place at about 6.30 p.m. on 23-7-1996. The assault was witnessed by S. S. Nath the Operations Officer. He gave a report about the incident to Shri Sahani. Shri Raj Kumar addressed a complaint on the same day to Chief Installations Manager, Mahul Terminal. After receiving the complaint and the report, the management suspended the second party workman and issued charge sheet dt. 1-8-1996. The inquiry officer recorded the evidence of first party and held the second party workman guilty of the charges levelled against him. After considering the family background of the second party, the disciplinary authority by its order dt. 18-5-2001 held that charges levelled against second party workman were of serious nature. The inquiry officer held that charges of wilful insubordination or disobedience, disorderly or *indecent* behavior and *assaulting* superior officer while on duty which warrants extreme punishment of dismissal from services. However taking into view the family background of the second party workman, the disciplinary authority took a lenient view and imposed the punishment of discharge from the services of the Corporation in terms of clause 32 (1) (f) of the standing orders applicable to the non-*management* employees of the Corporation. The appeal of the second party came to be dismissed. Therefore second party raised industrial dispute. As the conciliation failed as per report of ALC, the Ministry has sent the reference to this Tribunal.

3. The workman has filed his statement of claim Ex-7. He contended that the charges against him are false. According to him the inquiry was not fair and proper. He contended that he was not given an opportunity to defend himself. The inquiry was *proceeded ex parte*. There was violation of principle of natural justice. Therefore he prayed that the inquiry and findings of inquiry officer be set aside and he be reinstated in the service of first party with full back-wages.

4. The first party resisted the statement of claim vide its written statement Ex-9. They denied the contents and allegations in the statement of claim. According to

them fair and sufficient opportunity was given to the workman by the inquiry officer. The workman deliberately remained absent and did not avail the opportunity. Therefore there was no violation of principles of natural justice. According to them the inquiry is fair and proper and findings of the inquiry officer are not perverse. The charges against the workman are proved. They are of serious nature. Therefore they contended that the punishment of discharge from service is not shockingly disproportionate. Thus they pray that the reference be dismissed.

5. My Ld. Predecessor has framed the preliminary issues and in part-I award he held that the inquiry was not fair and proper and the findings of the inquiry officer were found to be perverse and directed the first party to justify its action of termination.

6. Following are the issues re-casted after part-I award for my determination. I record my findings thereon for the reasons to follow :

Issues re-casted after part-I Award.

Sr. No.	Issues	Findings
1.	Whether the second party is guilty of the charges levelled against him or any of them ?	Yes
2.	If yes, whether the punishment of termination/discharge is shockingly disproportionate ?	Yes
3.	Whether the workman is entitled to be reinstated with full back-wages ?	As per order below
4.	What order ?	As per order below

REASONS

Issue no. 1 :

7. The first party has examined in all three witnesses. They are MW-1 Shri Raj Kumar (Ex-31), MW-2 Shri Naresh Hassomal Sahani (Ex-33) at MW-3 Shri Prakash Ganpat Kamble (Ex-34). In respect of MW-3 Prakash Kamble it is a fact that neither he was present on 23-7-1996 when the incident took place nor he has personally checked the temperature of MPO Loader in any tank. It is a fact that this witness has no personal knowledge about the incident of alleged assault. However MW-1 Mr. Raj Kumar and MW-2 Mr. Naresh Hassomal Sahani are the material witnesses. Mr. Raj Kumar Ex-31 has stated in his evidence that he changed the figure of temperature from 26°C to 27°C to which he was authorized to. He further says that as per the procedure the said Tank Truck Driver after getting his signature went back to Bulk Operator/Loader and showed the invoice to the workman, who was the loader. He further says in his evidence that, the second party workman rushed to the Driver. He snatched the invoice from the driver and turned towards him in a wild gesture. According to him second party workman dropped the intercom. with a bang and slapped him on his right cheek. The incident took place at around 6.30 p.m. on 23-7-1996. According to him the assault was witnessed by Mr. S. S. Nath the Operations Officer. He further says that on same day he made complaint to Chief Installations Manager, Mahul Terminal through Shift Incharge. The copy of his complaint is on record. He further says that he also met Dy. Manager-Shift, Mr. N. H. Sahani and informed about the incident to him.

8. Version of this witness is supported by MW-2 Mr. N. H. Sahani who has deposed at Ex-33. He says on oath that, Mr. Raj Kumar met him and narrated the incident. Much stress is given in the cross-examination of both these witnesses on the point of recording of temperature and maintaining of temperature for two hours after loading a tanker. However that procedure is not much important. From the cross-examinations of both these witnesses nothing adverse is transpired in respect of the alleged assault by the workman. Both these officers have no enmity with the workman to implicate him falsely. They have no reason to make false allegation of assault as against the workman. MW-1 Mr. Raj Kumar is the concerned officer, who is the victim of the assault. Same day he has made complaint to his superior. He has also met MW-2 Mr. Sahani who was the Senior Resident Co-ordinator of the first party and was shift in-charge at Mahul Terminal at the relevant time. Both these officers have no reason to victimize the workman.

9. Furthermore the workman has admitted in his cross at Ex-35 para 11 therein that, in Ex-46 he has written temperature in his handwriting as 26°C and it was corrected by Mr. Raj Kumar as 27°C by erasing 26°C. He also disagrees in his cross-examination that there cannot be variation in temperature when two tankers are being filled up at the same time in two different bays. In short according to him if temperature of MTO product filled up in a tanker was 27°C, the temperature of the product filled up simultaneously in another tanker can be 26°C when according to the MW-1 Raj Kumar the same temperature has to be maintained for next two hours. Therefore he has given direction to the workman Loader to correct the temperature to 27°C instead of 26°C. According to witness Raj Kumar Ex-31, the workman not only refused to change the figure but also threatened him of dire consequences in case of any change by him. This refusal amounts to insubordination and disobedience of orders of superior officer. There is no reason to discard this version of witness Mr. Raj Kumar. Witness, Mr. Raj Kumar has also stated in his evidence that when workman came to know that he has changed the figure of temperature to 27°C from 26°C written by the workman, the workman snatched the invoice

from the Driver rushed towards him, lifted the intercom and banged it and also slapped him on his right cheek. This version of Raj Kumar is throughout consistent. It is reflected in his complaint before the inquiry officer as well as in his evidence herein at Ex-31. It is also supported by MW-2 Mr. N. H. Sahani who was Operations in-charge at the time of incident to whom Mr. Raj Kumar reported immediately after the incident and also forwarded the complaint to the higher authority.

10. In this respect the Ld. Adv. for the second party submitted that, the evidence of Shri N. H. Sahani is hearsay evidence. Neither Mr. Sahani was present on the spot of incident, nor he had seen the incidence. No eye witness was examined. Therefore the Ld. Adv. for the second party submitted that, the version of complainant Raj Kumar is not corroborated by any independent evidence and the evidence of Mr. Sahani needs to be discarded being hearsay evidence.

11. In this respect the Ld. Adv. for the first party has submitted that, in the case at hand the charges herein are proved beyond reasonable doubt, though is domestic inquiry it is not necessary and mere preponderance of probability suffice the purpose. He further submitted that there is no reason to discard the evidence of Mr. Raj Kumar. He also pointed out that evidence of Mr. Sahani Ex-33 also cannot be rejected as his evidence is natural. In domestic inquiry every hearsay evidence is acceptable. The Ld. Adv. for the first party submitted that in domestic inquiry strict rules of Evidence act are not applicable. He further submitted that in domestic inquiry, management need not prove its case beyond reasonable doubt and preponderance of probability suffices the purpose. In support of his argument the Ld. Adv. referred the following Apex Court Rulings :

(1) State of Haryana & Anr. V/s. Rattan Singh (1977) 2 SCC 491,

(2) J. D. Jain Vs. Management of State Bank of India & Anr. (1982) 1 SCC 143,

(3) Maharashtra State Board of Secondary and Higher Secondary Board V/s. K. S. Gandhi & Ors. (1991) 2 SSC 716,

(4) UPSRTC Vs. Mitthu Singh (2006) 7 SCC 180,

12. In all these rulings in respect of standard of proof, the Hon'ble Apex Court has observed that the strict rules of Evidence Act are not applicable and in domestic inquiry and management need not prove its case beyond reasonable doubts as in criminal cases and preponderance of probability suffice the purpose. Furthermore in the case of J. D. Jain Vs. Management of State Bank of India referred (supra) on the point of hearsay evidence the Hon'ble Apex Court in para 18 of the judgment observed that :

> "The Ld. Tribunal has committed another error in holding that the findings of *domestic* inquiry was based on hearsay evidence. The law is well settled that strict rules of evidence are not applicable in a domestic inquiry."

In this judgment the Hon'ble Court reiterated its earlier view taken in State of Haryana Vs. Rattan Singh AIR 1977 SC 1512 wherein in respect of hearsay evidence the Hon'ble Court has observed that :

> "There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

13. In the light of the ratio laid down by Hon'ble Apex Court the Ld. Adv. for the first party submitted that, evidence of Mr. Sahani thus cannot be discarded by saying that it is hearsay evidence as immediately after the incident complainant Raj Kumar approached him and *narrated* about the same. His evidence is consistent with the version of Raj Kumar. He is senior officer of the company and has no reason depose falsely. Thus evidence of Mr. Sahani has a reasonable nexus and credibility. Therefore the said evidence cannot be discarded. Furthermore I would like to point out that even evidence of Raj Kumar is acceptable as he has also no reason to implicate the workman falsely. His version is consistent and inspires confidence. Standard of proof not that of beyond reasonable doubt and preponderance of probability would suffice the purpose, thus independent corroboration is not necessary.

14. It is the case of the workman that he was victimized with malafied intention. In this respect the Ld. Adv. For the first party submitted that heavy burden is on the workman to prove the allegations of malafied. The Ld. Adv. further submitted that no reason or circumstances is placed on record on behalf of the workman to show either management or Mr. Raj Kumar has any reason to implicate him falsely. Therefore he has rightly submitted that the second party failed to discharge the burden of allegation of malafied, victimization. In respect of heavy burden of proof on the workman Ld. Adv. for the first party resorted to Apex Court ruling in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar (2003) 4 SCC 579 wherein the Hon'ble Court while commenting upon the burden of proof held that burden of proof is heavy on one who alleges malafieds and must be discharged. In this case Hon'ble Court further observed that :

> "Aspect of practicality in the situation and circumstances also cannot be ignored."

15. In the case at hand, no ground is placed on record on behalf of the workman as to why he was implicated falsely or what was the malafied intention of Mr. Raj Kumar to make such false allegation of disobedience and assault against him. In short, in the light of the principle laid down in the above rulings by the Apex Court conclusion can be arrived at that the charges of

disobedience, in subordination and assault are proved against the workman. Accordingly I decide this re-casted issue no. 1 in the affirmative.

Issue nos. 2 & 3 :

16. In respect of punishment the Ld. Adv. for the second party submitted that the punishment is shockingly disproportionate to the alleged misconduct. As against this the Ld. Adv. for the first party submitted that the misconduct of disobedience of order of superior in-subordination and assaulting of superior officer are the serious misconducts for which punishment of dismissal from service would suffice the purpose. In support of his argument the Ld. Adv. for the first party resorted to catena of Apex Court decisions they are :

(i) Muriadih Colliery of Bharat Coking Coal Ltd. V/s. Bihar Colliery Kamgar Union (2005) 3 SCC 331,

(ii) M. P. Electricity Board V/s. Jagadish Chandra Sharma (2005) 3 SCC 401,

(iii) Omkarnath Mishra V/s. State of Haryana & Anr. (2005) 3 SCC 736,

(iv) Hombe-Gowda Educational Trust & Anr. V/s. State of Karnataka & Ors. (2006) 1 SCC 430,

(v) Tata Engineering and Locomotive Co. Ltd. V/s. N. K. Singh (2006) 12 SCC 554,

(vi) Punjab Water Supply Sewerage Board & Anr. V/s. Ram Sajivan & Ors. (2007) 9 SCC 86,

(vii) West Bokaro Colliery V/s. Ram Pravesh Singh (2008) 3 SCC 729.

17. In most of these cases the respective workmen therein were involved in a serious misconduct of assault on superior officer causing bodily injuries. In some cases though the victim survived Hon'ble Court held that it cannot be a ground to take a lenient view to set aside the punishment of dismissal or termination from service. In one of the cases the workman therein had inflicted bodily injury to the victim when a another case the workman was released under the provision of Probation of Offender's Act, when in one matter the workman therein was acquitted by the criminal court. In one more matter a school teacher had abused the Head Master in filthy language and assaulted him with chappal. Considering the status as a teacher, the Hon'ble Court held that, no lenient view can be taken to reduce the punishment of termination. However in the case at hand, though the workman had refused to make correction in the temperature, the said act of disobedience cannot be said very serious. Furthermore though the workman has assaulted his superior officer, admittedly he merely gave a slap on the cheek of the officer. Neither he inflicted any bodily injury nor intended to inflict any such injury. In the circumstances the act of in-subordination and assault herein is also not too serious to inflict the punishment of termination. The ratio laid down in the above ruling are not attracted to the set of facts of the case at hand as facts of the above referred cases were altogether different than the facts of the case at hand. In this respect it is case of the first party that the workman was also given warning on earlier two occasions as mentioned in paras 37 & 38 of their written statement at Ex-9. It is alleged that, two tankers were derailed due to the mistake of the workman for which he has prayed for apology and he was given warning. In the next incident the workman was found sleeping while on duty. However both these incidences were of nature of mistakes or at the most dereliction on the part of the workman. There was no malice or any intentional action on the part of the second party. Thus these previous misconducts sort of mistakes need not be taken into account as they are in the nature of mistakes. In this backdrop, looking into the nature of misconduct proved against the second party, I come to the conclusion that the punishment of discharge or termination from services is no doubt shockingly disproportionate. In this respect I would also like to point out that the workman is not in service since more than 15 years. In my opinion he has suffered much and slapping his superior officer. In the circumstances instead of discharging or terminating him from services, I think it proper withholding one increment would suffice the purpose. In short, the workman can be reinstated by withholding one increment for disobedience, insubordination by indecent behaviour with his superior and for slapping him.

18. In respect of back wages I would like to point out that, the workman was not on duty since 1996. As he has not performed any work, it would be unjust to pay him full back wages. At the same time I would also like to point out that the workman says that he is unemployed and must have suffered a lot. In this backdrop to meet the ends of justice I think it proper to reinstate the workman with 20% back wages from the date of service of order of discharge on him till the date he resume on duty. Accordingly I decide this issue no. 2 in the affirmative and issue no. 3 partly in the affirmative. Thus the order :

ORDER

The reference is partly allowed with no order as to cost. The punishment of discharge/termination of services of the workman is hereby set aside. Instead of that his one increment is withheld permanently. The management is directed to reinstate the workman and to pay him 20% back wages from the date of service of order of his discharge. The workman be given his seniority and all other consequential benefits.

Date : 27-9-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मुम्बई पोर्ट ट्रस्ट, मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 29/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-1-2013 को प्राप्त हुआ था ।

[सं. एल-31011/19/2001-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 23rd January, 2013

S.O. 417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2002) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mumbai Port Trust (Mumbai) and their workman, which was received by the Central Government on 21-1-2013.

[No. L-31011/19/2001-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

Present : K.B. KATAKE,
Presiding Officer

Reference No. CGIT-2/29 of 2002

Employers in Relation to the Management of Mumbai Port Trust

The Chairman,
Mumbai Port Trust,
Shoorji Vallabhdas Road,
Ballard Estate,
Mumbai-400 038

AND

Their Workmen

Mr. Anant Shankar Shanbag,
2/36, Hamju Terrace,
Gokhale Road (S),
Near Portuguese Church,
Dadar, Mumbai-400 028

APPEARANCES :

For the Employer : Mr. M.B. Anchan, Advocate

For the Workmen : In Person

Mumbai, dated the 22nd November, 2012

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No. L-31011/19/2001-IR (M), dated 28-2-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the the action of the management of Mumbai Port Trust in terminating the services of Shri A.S. Shanbag, Light Keeper w.e.f. 11-5-2000 by way of Dismissal is legal and justified? If not, what relief the workman is entitled to ?"

2. In this case it is alleged that, the second party workman wanted to proceed on leave to attend yearly religious function at his native place and his colleague was to return from leave 4 days earlier to relieve him. Every year the workman used to go on leave for a week to attend the cremony and every year his only colleague Mr. P.V. D'Souza, Assistant Light Keeper used to relieve him. However, in the year 1997 the festival was on 8-4-1997. Mr. D'Souza was on leave from 27-3-1997 upto 30-3-1997. He was supposed to return on 31-3-1997. However Mr. D'souza did not report his duty on 31-3-1997. He was absent till 7-4-1997. Therefore, the workman could not proceed on leave. Hence the workman was annoyed a lot. Suddenly on 7-4-1997 Mr. D'Souza resumed his duties. The workman did not like the manner and conduct of Mr. D'Souza who being close friend and colleague did not come in time to help the workman to attend the religious ceremony at his native place. When he saw Mr. D'Souza on 7-4-1997, the workman got angry. He lost his control and scolded Mr. D'Souza and also assaulted him and inflicted injury to Mr. D'Souza. Immediately thereafter he realised his mistake. He reported the incident to his superior. He took Mr. D'Souza and gave him first aid. Workman also immediately called a launch and made every arrangement to get medical aid and attendance to Mr. D'Souza in the hospital. He also used to visit Hospital to see Mr. D'Souza. He also gave a letter to Dy. Conservator, MbPT and narrated the incident and also prayed for apology. Criminal complaint was lodge against him at Yellow Gate Police Station. The workman was arrested and released on bail. After some days Mr. D'Souza and workman started attending their respective duties. Mr. D'Souza has also gracefully forgotton the unfortunate incident and started working with the workman. Mr. D'Souza has sent two letters informing the authority that he has no grievance against the workman and they were working together at the light house. In the Departmental Inquiry workman was held guilty and he was dismissed from service.

3. The Workman raised the industrial dispute. As conciliation failed, Ministry sent the reference to this Tribuanl. This Tribunal held in part-I award that the inquiry was fair and proper and the findings of IO are also held not perverse. In this Part-II award following are the re-casted issues for my determination. I record my findings thereon for the reasons to follow :

Sr. No.	Issues	Findings
3.	Whether the punishment of terminating the services of workman is shockingly disproportionate to the proved misconduct?	Yes.
4	What relief the workman is entitled to ?	As per order below.

REASONS

Issue Nos. 3 & 4 :

4. As both these issues are interrelated, they are discussed and decided simultaneously. In this respect the Ld. adv. for the first party submitted that when the inquiry is held fair and proper, the Tribunal cannot reduce the punishment awarded in the departmental inquiry. He submitted that the punishment imposed is not shockingly disproportionate. The workman assaulted his colleague and inflicted a fracture injury to him and committed grave misconduct which is sufficient to impose the punishment of termination of services.

5. As against this according to the Ld. adv. for the workman, workman has fairly admitted the untoward incident of assault. The Ld. adv. further submitted that, the workman has temporarily lost control over himself and assaulted his colleague Mr. D'Souza as he did not return in time and as workman missed his religious function. The Ld adv. submitted that even in murder case under IPC grave and sudden provocation is taken into account to reduce the punishment. However the inquiry officer and the management did not take into account that the untoward incident of assault was an incident taken place in a spur of moment when the workman lost his control and assaulted his colleague. He pointed out that immediately thereafter he realised his mistake. He not only informed to his superior but also gave first aid to Mr. D'Souza who was injured in the assault and also called a launch and sent Mr. D'Souza to the hospital. He has also submitted written report to his superior about the incident and narrated everything and also confessed to have assaulted Mr. D'Souza and inflicted injury to him. In the circumstances, Ld. adv. submitted that the management did not take in to account the circumstance in which the incident had taken place. He further submitted that management did not take into account that the workman repented for his mistake and also confessed everything in writing to his superior. Even Mr. D'Souza also realised that the workman had lost control and in a spur of moment assaulted him. Therefore he had also forgiven the workman and they had started working together.

6. In the circumstances Ld. adv. for the second party submitted that all these facts need to be taken into account and the Labour Court has every power and discretion to reduce the punishment. In support of his argument the Ld. adv.. resorted to Rajasthan High Court ruling in Eicher Good Earth Ltd V/s. Presiding Officer, Labour Court & Anr. 1999 III LLJ (Supp) 1578 wherein Hon'ble High Court on the point of punishment under Section 11K of I.D. Act observed that :

> "Wide discretion is given to Labour Court to consider whether punishment is proportionate to the charges. However Labour Court has to give reasons as to why penalty of dismisal is disproportionate to charges."

In the case at hand, though workman has assaulted his colleague and caused grievous hurt and fracture injury to him, the facts are very typical. The workman had lost control and in the spur of moment, in a heat of anger he assaulted his colleague. Immediately thereafter he realised his mistake and provided first aid and made arrangement to send him to the hospital. Though principle of grave and sudden provocation is not applicable to the case at hand, the incident is just like it. When state of loss of control is taken into account in a serious criminal offence, it can be considered in the typical and rare cases like the case at hand.

7. In respect of power of the Tribunal to alter the punishment the Ld. adv. for the second party resorted to Supreme Court case in State of MP and Ors V/s. Hazarilal (2008) 1 SCC (L & S) 611 wherein on such type of misconduct the Hon'ble Apex Court observed that :

> "He was not convicted for any act involving moral turpitude. He was not punished for henious offence. The Administrative Tribunal rightly held that Departmental Penalty was excessive as compared to conduct for which the respondent was convicted and sentence imposed on him."

8 The Ld. adv. also resorted to another Apex Court ruling in shankar Dass V/s. Union of India & Anr. (1985) 2 SCC 358 wherein the Hon'ble Apex Court on the point of punishment observed that :

> "Clause (a) of Second proviso to Article 311 (2) of Constitution confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge. But that power like every other power has to be exercised fairly, justly and reasonably."

9. The Ld. adv. also referred to following rulings :

1. State of UP V/s. Sheo Shankar Lal Srivastava & Ors. (2006) 3 SCC 276.
2. Cement Corporation of India V/s State of HP & Ors. 1995 II LLJ 987.
3. Indian Farmers Fertilizers Corporation Ltd. etc. V/s. PO, Labour Court, Chandigarh 1999 I LLJ 1040.

10. The Ld. adv. also resorted to Apex Court ruling in Mauji C. Lakum V/s. Central Bank of India (2009) 1 SCC (L&S) 254 wherein the Hon'ble Court held that, though Tribunal held the inquiry was just and fair yet this did not debar the Tribunal from considering whether particular findings were supported by evidence and whether the punishment was proportionate. In this case the Hon'ble Court further held that Tribunal's interference with the punishment was within its power under Section 11-K of the I.D. Act. In the light of these observations of above rulings and fact and circumstances of the case on record, I come to the conclusion that though workman had assaulted his colleague, it was in the heat of anger. The fact is not disputed that the workman and his colleague Mr. D'Souza were on isolated light house and there was nobody either to intervene or to help them. It is a fact that immediately after the incident the workman realised the mistake he had committed and the isolated situation over there. He immediately gave first aid to the injured and made necessary arrangement to send him to hospital. Had he any evil intention he could have killed Mr. D'Souza or could have left him at the isolated island in injured condition. On the other hand the workman has shown utmost sympathy and also informed his superiors that he had committed mistake and also called for a launch to send the injured to the hospital. Due to the workman, the injured got timely medical aid and danger to his life and limb was averted. All these facts are admitted and put on record even by the first party. However these facts are not taken into account by the inquiry officer and management while awarding the punishment. In the circumstances the punishment of termination can be termed as shockingly disproportionate. Thus, I think it proper to set aside the punishment of termination of services of the workman and think it proper to award punishment of withholding his two increments, which would suffice the purpose. With this modification I would like to direct the first party to reinstate the workman by with holding his two increments.

11. In respect of back wages, the fact is not disputed that the workman has not worked at all with the first party since the date of his dismissal. it is well established principle that, 'no work no pay'. In the circumstances awarding full back wages would not be just and proper. At the same time not awarding any back wages would be unjust to the workman and his family. In this backdrop, to meet the ends of justice I think it proper to reinstate the workman with 30% back wages. Accordingly I decide this issue No. 3 in the affirmative and like to give appropriate relief to the workman. Thus I partly allow the reference and proceed to pass the following order :

ORDER

(i) The reference is party allowed with no order as to cost.

(ii) The punishment of termination of services of the workman is hereby set aside. Instead of that two increments of the workman are withheld.

(iii) With this the first party is directed to reinstate the workman with 30% back wages from the date of his termination till the date of his reinstatement.

Date : 22-11-2012 K.B. KATAKE, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 20/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/128/1998-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/99) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12012/128/98-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 20/99

BETWEEN

Sri Satya Parkas, C/o Sri B.P. Saxena, 426, W-2, Basant Vihar, Kanpur

AND

Regional Manager, Bank of India, 15/54-B, Virendra Smriti Complex, Civil Lines, Kanpur.

AWARD

1. Central Government Mol, New Delhi vide notification No. L-12012/128/98 IR B-II dated 27-1-99, has referred the following dispute for adjudication :

2. Whether the action of the management of Regional Manager Bank of India, Kanpur in terminating the services of Sri Satya Parkas, with effect from 6-7-99, is justified? If not to what relief the workman is entitled ?

3. Brief facts are :—

4. It is an admitted fact that the claimant Sri Satya Parkash was appointed in Bank of India, in the year 1983, as Cepoy peon at Regional Office, Kanpur, on probation. Subsequently he was confirmed on permanent service of the bank. Thereafter he was promoted to the post of cash peon and posted at Swarup Nagar Branch of the bank.

5. While working at Swarup Nagar Branch he was placed under suspension vide letter dated 13-7-94, by the disciplinary authority. Later on he was served with a charge sheet dated 4-5-95 by the Disciplinary authority. Sri K.S. Tripathi an officer was appointed as inquiry officer. Inquiry Officer conducted and concluded the inquiry on 16-8-95, whereafter he submitted his finding to the Regional Manager/Disciplinary Authority. Thereafter disciplinary authority issued a show-cause notice dated 30-7-96 to the applicant proposing the punishment of removal from service without disqualification for future employment. Disciplinary authority also granted a perfunctory personal hearing, whereafter he inflicted the punishment already proposed vide letter dated 10-9-96. Being aggrieved by the said order he made an appeal to the appellate authority which too was rejected by the said authority vide his letter no. ..... dated Nil.

6. Thereafter he raised an industrial dispute before the ALC which is now pending before this tribunal.

7. It is alleged that the order of the disciplinary authority is illegal unjustified because there was flagrant denial of natural justice to the claimant during the course of conduct of inquiry, originals of exhibits MEX 1 and 2 were not shown. The presenting Officer did not file the documents in one go but produced them at the time of evidence of each witness, the details of which have been mentioned in Para 11(2) of the claim statement. The relevant question put to the management witnesses were not allowed by the inquiry officer. The finding of the inquiry officer is perverse due to the reason mentioned in Para 11(4) of the claim statement. Evidence of the witnesses M.W. 1 to 3 and others have not been properly appreciated. Inquiry Officer has failed to notice the manifest facts, therefore, his findings are perverse. It is also alleged that due to the mistake of other official like M.W. 1 to 3 no punishment has been inflicted upon them and the applicant has been made an escape goat.

8. Therefore, he has prayed that it may be held that the order of the disciplinary authority as well as appellate authority is illegal and unjustified and the claimant may be reinstated with all consequential benefits.

9. Opposite party has filed the written statement. They have admitted that the applicant was placed under suspension. He was served with a charge sheet and an inquiry officer was appointed, who conducted the inquiry in a fair and proper manner. He has recorded the evidence of all the witnesses. Defense representative was engaged by the claimant, who has cross-examined all the witnesses thoroughly, claimant was permitted to produce his defense and witnesses in his defense. After going through the evidence and the documentary evidence, the inquiry officer has submitted his finding before the disciplinary authority. Thereafter a show-cause notice was served to the claimant proposing, inter-alia, and punishment of removal from service without disqualification for future employment. The disciplinary authority also granted a personal hearing calling upon the applicant to show cause on the aforesaid. The personal hearing was attended by the employee along with his defense representative. He has also submitted a detailed written submission. After considering the entire matter the disciplinary authority passed an order of punishment on 10-9-96, which was served on him on 14-9-96. Proper opportunity was also granted in appeal to the applicant. The appellate authority did not find any merit in the submissions of the claimant; therefore, the punishment inflicted upon the worker is legal, justified and commensurate with the gravity of the misconduct proved against the claimant Sri Satya Parkas. There was no denial of natural justice during the course of inquiry. All the documents were shown to the applicant. MX 1 and 2 were filed by the presenting officer before the commencement of oral evidence. If there had been any violation of natural justice, had any prejudice been caused then the defense representative could have raised objection and lodged his protest then and there which was never done. The allegation of perpetration of fraud on the bank has been proved against the applicant in the departmental inquiry therefore he has been properly punished. It is wrong to say that the applicant had been made an escape goat. M.W. 1 to 3 were nowhere involved in the fraud, therefore, the allegation raised by the claimant are false that he has not been given the full opportunity for defense. Therefore, the claim is liable to be dismissed.

10. Rejoinder has also been filed in the case by the claimant reiterating the facts pleaded by him in his claim

statement and denying the versions of the written statement filed by the opposite party bank.

11. Claimant has filed the documents that is charge sheet dated 4-5-95, show cause notice and order of punishment dated 10-9-96.

12. Opposite party bank has filed 19 documents vide list dated 20-4-04. These documents are, charge sheet, inquiry proceedings in original, written evidence of Sri Satya Parkash, Written brief of Presenting Officer, and defense representative, defense exhibits, management exhibits ME-1 and ME 1-A, ME-2, Exhibit ME-3 withdrawal slip in original, Ext. ME-4 saving bank account card of account No. 8115, Exhibit ME-5-6 inquiry report, show cause notice, proceedings of personal hearing, punishment order, appeal of the claimant, personal hearing during appeal and appellate order.

13. Opposite party has also filed 23 documents vide list dated 7-11-11. In this list some of the documents are photocopies of the same documents that has been referred aforesaid. This list contains letter of Sri Satya Parkash along with statement of the witnesses which have been given by them before an officer of the bank before the inquiry was commenced.

14. In this case a preliminary issue was framed on 10-2-02 regarding the fairness of the inquiry conducted by the management against the claimant.

15. This issue is being disposed of on the request of the parties after the conclusion of the evidence and the whole matter.

16. The opposite party has contended that the inquiry officer has conducted the inquiry fairly after following the principle of natural justice, he was not having any bias against the delinquent employee, no such imputation has been made by the employee or his defense representative during the inquiry proceedings against the inquiry officer to the disciplinary authority or any other authority. Had there been any prejudiced caused to the claimant during the course of inquiry in not following the principle of natural justice then the claimant through his defense representative should have raised objection then and there which have not been raised.

17. The facts are that one account holder Sri Gaya Prasad who is having his account in the branch bearing his account No. 8115 who has been produced as witness M.W. 4 during inquiry and the said witness has also been produced before the tribunal as M.W. 4. He has alleged that he has gone to the bank on 27-5-94 to deposit an amount of Rs. 1000 and he has kept his pass-book in the box kept in the bank on the saying of Satya Parkash. He has gone number of times to collect his pass-book but his pass book was not searched and given to him by Satya Parkash, that he has also gone on 13-6-94. On that day he found that Rs. 4000 has been fraudulently withdraw from his pass-book and a role has been assigned to delinquent employee to Sri Satya Parkash in the fraudulent withdrawal of the cash. The inquiry officer has taken on record the evidence of the witness AK Asrani who was clerk in the said branch as MW 1, recorded the evidence of Sri Nirmal Kumar Cashier as MW. 2, recorded the evidence of Sri KK Awasthi Special Assistant as M.W. 3, recorded the evidence of Sri Gaya Prasad Account holder as MW 4, recorded the evidence of Sri KC Sharma an officer in the bank as MW 5. Recorded the evidence of the defense witness Sri Raj Kumar sub staff as DW 1.

18. He has also examined the documentary evidence, the letter dated 13-6-94 MX-1, complaint of Sri Gaya Prasad dated 13-6-94 MX-2, withdrawal form of saving bank regarding withdrawal of Rs. 4000 MX-3, specimen signature card in original of the said account MX. 4, written statement of Sri AK Asrani MX-5 and written statement of Sri Nirmal Kumar dated 13-6-94 MX-6.

19. Evidence has also been produced by both the parties during the trial before the tribunal. Claimant has produced himself as WW. 1 Satya Parkash.

20. Opposite party has produced Sri K.S. Tripathi, Sr. Manager as M.W. 1 who has been the inquiry Officer. Sri Nirmal Kumar has been produced as MW-2 and Sri AK Asrani as MW.3 and Sri Gaya Prasad who is the complainant as MW.4.

21. I am taking the evidence of WW. 1 and MW. 1 at the initial stage for the purpose whether proper and fair inquiry has been conducted by the inquiry officer Sri KS Tripathi. Sri Tripathi MW. 1 has stated on oath that all the documents were made available to the claimant and all the witnesses were thoroughly examined by the defense representative. The whole inquiry was conducted in the presence of the claimant and he was given full opportunity to defence. After the conclusion of the evidence the claimant was again given an opportunity to submit his submission which he had submitted. He was also given a personal hearing. On the basis of material available and evidence produced by the parties he has found the charges proved against the employee. He has submitted his inquiry report before the disciplinary authority which is on the file. After getting satisfied and giving hearing to the claimant the disciplinary authority had punished him. He has been cross-examined thoroughly nothing has come out in his cross from which it can be inferred that he has not conducted the inquiry fairly or properly or in accordance with the principles of natural justice. During the examination MEX1 and MEX-2 in original were not produced and certified copies of these documents were produced. It is alleged that the workman has not raised any objection after the production of certified copies.

22. However the original of these documents were produced by the opposite parties before the tribunal.

These documents are withdrawal forms and specimen card in original. I have examied these documents. Withdrawal form is that document on which Rs. 4000 has been fraudulently withdrawn.

23. Therefore, on the basis of material available on the record, it can be safely presumed that a fair and proper domestic inquiry was conducted by the opposite party. During arguments it is contended that defense representative of the workman has concived with the management and he did not conducted the cross-examination thoroughly. This contention of the workman is against the record and is not believable.

24. Moreover, the opposite party has also produced the evidence before the tribunal to establish the charges before the employee, MW. 3 Sri Asrani has stated on oath that on the saying and on persuasion of Satya Prakash he has issued token No. 45 to a person who has put her signature in the name of Seema which is paper No. 21/89. MW. 2 Sri Nirmal Kumar who was cashier-cum-accounts clerk has also stated on oath that when the alleged fraudulent person came to collect the cash, at that time Satya Parkash was constantly standing watching and hearing the conversation. Sri Satya Parkash being a permanent staff on his saying and persuasion that he knows the person who has come to collect the cash, so he made the payment to that fraudulent person.

25. Opposite party has also produced the complainant Gaya Prasad as a witness MW. 4 . He has also stated on oath that after depositing the cash and to get an entry in the pass book he has deposited the pass book in the box of the bank on the saying of Satya Prakash. Thereafter, he went to the bank several times and asked Satya Prakash to return the pass book but he did not. He stated that Rs. 4000 has been withdrawn from his account due to the connivance of Satya Prakash.

26. All these witnesses have been thoroughly examined. Nothing has come out in their statement which makes their statement unbelieveable.

27. There is a public witness as well bank employees who have been produced by bank as witness. Therefore their testimony is believable. There is no reason to discard the evidence of these independent witnesses.

28. Therefore, considering all the material available on the record it has been found that the opposite party has conducted the domestic inquiry in a fair and proper manner. Moreover, opposite party has also established the charges which have been levelled against the employee.

29. I have also examined the punishment which has been awarded to the claimant.

30. Considering the gravity of the charges and the facts and circumstances of the case, I am of the confirm view that the punishment awarded to the claimant in the facts and circumstances of the case by the disciplinary authority full commensurate with the gravity of the misconduct.

31. Therefore, I do not find any reason to interfere with the punishment awarded to the claimant by the disciplinary authority. Therefore, the action of the opposite party as referred in the reference order is held to be legal and justified and it is held that the workman is not entitled for any relief pursuant to the present reference order.

32. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनक कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 42/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/61/2006-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2006) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12012/61/2006-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 6th September, 2012

PRESENT:

Shri S. N. NAVALGUND, Presiding Officer

C. R. No. 42/2006

I Party	**II Party**
Sh. A. Shivarama Naik, No. 709, Vinayakanagar, Jigani, Jigani Post, Anekal Taluk, Bangalore-562 106	The General Manager (P), Dena Bank, Regional Office, Sona Towers, 1st Floor, 71, Millers Road, Bangalore-560 052

APPEARANCES :

I Party	: Shri B. N. Poojary, Advocate
II Party	: Shri Ramesh Upadhayay, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2(A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/61/2006-IR(B-II) dated 17-10-2006 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Dena Bank in terminating the punishment of compulsory retirement from the services of the bank of the workman, Shri A. Shivarama Naik, Ex-Clerk-cum-Cashier, Dena Bank, Jigani Branch, Bangalore w.e.f. 31-8-2004 is legal and justified ? If not, to what relief the workman is entitled and from which date ?"

2. After receipt of the reference when notices were issued to both the sides they entered their appearance through their respective advocates and filed claim statement and counter statement respectively.

3. Since in the claim statement filed by first party certain allegations were made the Domestic Enquiry having not been conducted affording fair and proper opportunity while framing a Preliminary Issue :

"Whether the Domestic Enquiry conducted by the II Party against the I Party is fair and proper ?"

the evidence of Presenting Officer adduced by the II party counsel as MW 1 was received and in his evidence Ex M-1 to Ex M-15 the details of which are described in the annexure were exhibited. When the matter was at the stage of cross-examination of MW 1, on 7-1-2011 the learned advocate appearing for the I party while filing a Memo that he has no cross-examination to MW 1 further made a submission that since he would urge only on quantum of punishment answering the Preliminary Issue in the affirmative it may be posted for arguments on merits, dispensing with cross-examination of MW 1, answering the Preliminary Issue in the Affirmative i.e., Domestic Enquiry held by the II party against the I party being Fair and Proper the matter was posted for arguments on merits. Then the learned advocate appearing for the I party filed his written arguments and in support of his written argument cited the decision reported in (1973) 1 Supreme Court Cases 813 (Workmen vs. Firestone Types and Rubber Co.); AIR 1973 Supreme Court Cases 1227 (Workmen of P.T. & R Co., vs the management); 1983 (2) Supreme Court Cases 442 (Bhagathram vs. State of Himachal Pradesh and Others). Whereas the learned advocate appearing for the II party taking me through the documentary evidence produced at Ex M-1 to Ex M-15 urged that the I party in his reply to the charge sheet did admit the charges and even before the Enquiry Officer at the end of proceedings he having admitted the charges the Enquiry Officer having regard to the material brought on record by the management rightly held the charges being proved and as there is no pleading or evidence I party being either victimized or there being any discrimination in imposing the punishment of compulsory retirement and as the charges admitted by the I party interpolating with the documents of the bank and managing to pass the cheques of the customers from whom he had borrowed the money without sufficient balance in their account being a grave misconduct the Disciplinary Authority having regard to the fair admission by the I party to the charges having imposed lenient punishment of Compulsory Retirement instead of dismissal which would have barred him from taking any fresh employment there is no reason to interfere even in the punishment imposed by the DA affirmed by the Appellate Authority. Thus he supported the enquiry finding as well as the punishment imposed by the Disciplinary Authority upheld by the Appellate Authority and urged for rejection of the reference. Learned Counsel for the Management in support of his arguments relied upon two decisions reported in (1997) 90 FJR 1 (New Shorrock Mills vs. Mahesh Bai T Rao) and 1996 I LLJ 811 (SC) [Additional District Magistrate (City) Agra vs. Prabhakar Chaturvedi & Another].

4. The brief facts leading to this reference and award may be stated as under :

5. The I party while working as clerk in the Jigani branch of the II party bank as a Computer Operator for the saving bank ledger was served with the charge sheet dated 9-2-2004 :

CHARGE SHEET

The circumstances appearing against you are as under :

That while working as Computer Operator at our Jigani Branch, you have allowed withdrawal of cash from the savings Bank Accounts of two account holders which were not having adequate balance, on the following two occasions :

(a) On 13-10-2003, you have allowed Rs. 7,000.00 (Rupees Seven Thousand only) to be withdrawn from SB A/c No. 10992 of Shri Ramakrishnappa even though there was no sufficient balance and the balance available in the account was only Rs. 881.00.

In order to tally the day book, you have made the debit of Rs. 7,000.00 in SB A/c No. 5030 of

Shri Krishnamachary on 13-10-2003 after generating the audit trials, and generated the final summary Reports in order to conceal your fraudulent act of withdrawal and for tallying the Day Book.

(b) On 3-11-2003, you have allowed Rs. 7,000.00 (Rupees Seven Thousand only) to be withdrawn from SB A/c No. 146 of Shri Vittal Rao even though there was no sufficient balance and the balance available in the account was only Rs. 1339.00.

On 3-11-2003 you have inflated the Payment side total in Day Book against Savings Bank section, so that the day book will be tallied. The Final Summary Report generated by you shows the total of debit of Rs. 6,97,205.00 whereas you have taken the total as Rs. 7,04,205.00, so as conceal the fact of your fraudulent withdrawal.

On both the above mentioned occasions, you have sent the cheques for payment by giving transaction numbers, without actually debiting to the respective accounts. You have also generated the Audit Trials at the end of the day without incorporating the above mentioned withdrawals to avoid detection of your act. You have not only indulged in fraudulent act but also attempted to conceal the facts by above acts besides destroying the instruments under reference.

(c) On 10-11-2003, you have made a debit entry of Rs. 9,000.00 (Rupees Nine thousand only) in SB A/c No. 5030 of Shri Krishnamachary (since deceased). Against the said debit entry of Rs. 9,000.00 you have credited an amount of Rs. 2,000.00 to SB A/c no. 9987 of Shri Papiah. The balance amount of Rs. 7,000.00 has been set-off towards the fraudulent withdrawal of Rs. 7,000.00 made by you on 3-11-2003 in SB A/c No. 146 of Shri Vittal Rao without actually debiting the cheque (withdrawal) in the said account.

All the above entries were made by you are fraudulent and unauthorised. You have also manipulated the figures for tallying the day book so that these entries could not be detected by the Branch Officials during routine checking.

Thus, you have not only indulged in fraudulent act of withdrawal but also attempted to conceal the facts by manipulation of records and tampering with evidence.

In this regard, reference is invited to our show Cause Notice No. BRO/VIG/275/2004 dtd. 7-1-2004 and your reply dated 7-2-2004. The reply was however not found to be satisfactory.

Your aforesaid fraudulent act, if proved would constitute the following acts of gross/minor misconduct in terms of the following provisions of the Bipartite Settlement dated 10-4-2002.

5.j — Doing an act prejudicial to the interest of the Bank or gross negligence/negligence involving or likely to involve the Bank in serious loss.

7.c — Neglect of work, negligence in performing duties.

7.d — Breach of any rule of business of the Bank or instruction for the running of any department.

You are hereby advised to submit you explanation within a period of 7 days from the date of receipt of this charge sheet, failing which it will be presumed that you have no explanation to offer and the matter will be proceeded with accordingly, as deemed fit.

Sd/-

Regional Manager &
Disciplinary Authority

6. Though the I party in his reply dated 17-3-2004 (Ex M-2) admitted the charges the Disciplinary Authority ordered for holding the Domestic Enquiry appointing Sh. G. S. Kishore as Enquiry Officer and Sh. Komal Sunder as Presenting Officer. The Enquiry Officer while causing notice to the I party and following all the required formalities of the preliminary hearing, inspite of the CSE/ I party submitting to the question of the Enquiry Officer whether he accept charges and plead guilty that he has submitted his reply dated 7-2-2004 and letter dated 17-3-2004 in reply to the show cause notice pleading guilty, the Enquiry Officer called upon the Presenting Officer to produce evidence on the charge. In other words the CSE/ I party inspite of pleading guilty to the charge the Enquiry Officer called upon the Presenting Officer to produce the evidence and after recording the evidence of Sh. Gilroy Dsilva, Officer as MW 1 and exhibiting Ten documents and called upon the CSE/I party to make his submission and also to examine witnesses if he intends, the CSE while submitting that he has no witness to examine simply made a submission :

"I humbly submit I joined the services of the bank on 17-12-1982 and have been serving Jigani branch

since then I have record of unblemished service. I come from a poor family and have two daughters aged 11 & 12 years respectively. The incident that has taken place is without any ulterior motive. However, as directed by the Branch Manager, I gave a letter with an assurance that no harm would be done. Looking into my past records of unblemished service. I humbly pray your Honour to take a lenient view in the matter and set aside the charge sheet in the interest of natural justice."

7. Thus the I party initially when the charge sheet was served on him by way of his reply, secondly when the Enquiry Officer read over and explained him the charges and thirdly after receiving the evidence tendered for the management when asked to make his submission he has categorically admitted the charges levelled against him as submitted by the learned advocate for the II party. Moreover, the learned advocate appearing for the I party having regard to this situation having fairly made a submission that he shall not assail the validity of the enquiry and even the finding of the Enquiry Officer and that he would urge only on the quantum of punishment, the only point that remains for my consideration is whether the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority of compulsory retirement is harsh or disproportionate to the charges proved/admitted by the I party.

8. It is borne out from the charges framed against the I party and the evidence adduced during the course of enquiry that it is the case of II party that the I party while working at its Jigani Branch as a Computer Operator for the saving bank ledger had borrowed money from some of the customers of the bank and when two such customers approached him for repayment he obviously telling them that he shall deposit money in their accounts and they may give cheques to withdraw the same, on their presenting cheques he managed to pass those cheques without making debit in their accounts since adequate balance were not available and at the end of the day while tallying the day book he changed the figures in letting cash payment side totals of the said SB accounts and there by manipulated the entries in the books of the bank to hide the fraud played by him. Since this charge and the evidence admitted by the I party do amount to grave misconduct prejudicial to the interest of the bank in order to gain himself by making payment to the customers from whom he had borrowed the amount without there being any sufficient balance in their account such official could not have been allowed to continue service in the bank, as such the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority of compulsory retirement cannot be said to be either harsh or disproportionate to the charge proved/admitted by the I party. There is no dispute as to the ratio laid down in the decisions relied upon by the learned advocate appearing for the I party that Section 11 A of the ID Act do empower Industrial Tribunal to re-appreciate the evidence and to come to a conclusion whether finding of the Enquiry Officer is perverse and also to consider whether the punishment imposed on the charges proved is harsh or disproportionate but in the instant case as already adverted by me above through-out the I party having admitted the charges levelled against him there is no scope for me to interfere in the finding of the Enquiry Officer charges being proved. Even otherwise since it was on the I party to demonstrate that the enquiry finding is not based on the evidence placed before him and that it is perverse and as already adverted by me above the learned advocate appearing for him while making a clear submission that he would urge only on quantum of punishment and Preliminary Issue touching the fairness of the Domestic Enquiry may be answered in the affirmative, no efforts being made to convince me the finding of the Enquiry Officer being baseless or perverse the decisions cited by him do not come to his aid in any manner. For the reasons stated by me above for the proved charges against the I party which do amounts to grave misconduct prejudicial to the interest of the bank to conceal the fraud committed by him for self gain the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority cannot be said to be harsh or disproportionate, absolutely I find no grounds or reasons either to interfere in the finding of the Enquiry Officer or the punishment imposed by the Disciplinary Authority upheld by the Appellate Authority exercising the power vested in me under Section 11A of the ID Act. In the result, I arrive at the conclusion of rejecting the reference and pass the following order :

ORDER

The reference is rejected holding the action of management of Dena Bank in imposing the punishment of Compulsory Retirement from the services of the Bank on Sh. A Shivaram Naik, Ex Clerk-cum-Cashier, Dena Bank, Jigani Branch, Bangalore w.e.f. 31-8-2004 is legal and justified and that he is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

List of witnesses examined before the Enquiry Officer :

MW 1 — Sh. Gilroy Dsilva, Officer

CSE — Nil

Documents exhibited on behalf of the Management before the Enquiry Officer :

MEx - 1 — Muster Roll from June 2003 to till date

MEx - 2 — Audit trial of 13-10-2003

MEx-3 — Cash Scroll of 13-10-2003

MEx-4 — Cash Scroll of 3-11-2003

MEx-5 — Final Long Book dated 3-11-2003 containing 63 transactions

MEx-6 — Day book of 3-11-2003

MEx-7 — Statement of Account of Sh. B. Vital Rao, SB 146

MEx-8 — Signature on the letter is of SB account holder 146 Shri B. Vital Rao

MEx-9 — Statement of account of SB No. 5030 of Late Shri H. K. Krishnamachar

MEx-10 — Letter given by Shri A Shivaram Naik to the Manager, Dena Bank, Jigani Branch

Documents exhibited on behalf of the CSE before the Enquiry Officer.

नई दिल्ली, 23 जनवरी, 2013

का. आ. 420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 69/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12011/87/2003-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2003) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12011/87/2003-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/LABOUR COURT (NO. 2) AT DHANBAD

PRESENT :

Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 69 of 2003

PARTIES :

Employers in relation to the management of Central Bank of India, Patna and their workman.

APPEARANCES :

On behalf of the workman : None

On behalf of the management : Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 26th Sept., 2012

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order (No. L-12011/87/03-IR-B-II) dated 13-8-2003.

SCHEDULE

"Whether the claim made by Bihar State Central Bank Employees' Association for regularisation of service of temporary Safai Karamchari Sh. Babu Lal Bind is justified ? If not, to what relief the workman is entitled ?"

2. None appeared for any of the parties nor any witness for the evidence of the workman produced despite several opportunities and last chance for it, for which Regd. notices dt. 8-11-2010, 3-3-2011, 9-10-2011, 3-2-2012 and 24-4-2012 were issued to both the parties on their respective addresses noted in the Reference itself, but not a single witness for the evidence of the workman Babu Lal Bind has been produced.

The perusal of the case record reveals the fact that the case has been pending for the evidence of the workman since 8-11-2010. The Reference relates to the claim of the Union concerned for regularization of service of temporary Safai Karmchari Babu Lal Bind. The conduct of the Union as well as the workman mainly shows that they are disinterested to pursue the case for its finality.

Proceeding with the case under such circumstances of non-appearance of the Union concerned workman for a long time is unwarranted. Therefore, the case is closed; and accordingly it is passed an order for non existence of the Industrial dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, धनबाद के पंचाट (संदर्भ संख्या 146/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12011/5/1999-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 146/1999) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 22-12-2012.

[No. L-12011/5/1999-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/LABOUR COURT (NO. 1), DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 146 of 1999

PARTIES :

Employers in relation to the management of Central Bank of India, Patna

And

Their workmen

PRESENT :

Shri RANJAN KUMAR SARAN, Presiding Officer

APPEARANCES :

For the Management : Sri D. K. Verma, Advocate

For the Workman : Sri Sachidanand Sharma, Concerned workman

State : Bihar Industry : Bank

AWARD

Dated, the 4th October, 2012

By order No. L-12011/5/99-IR(B-II) dated 4/11-6-1999, the Central Government in the Ministry of Labour has in exercise of power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether Sri Sachida Nand Sharma, Guard, Sri Baban Kr. Sharma, Guard and Sri Mahesh Paswan, Sweeper worked for more than 240 days with the concerned Apartment of Central Bank of India, Patna ? If so, whether the action of management of the Bank in withdrawing the services of concerned three workmen are justified ? If not, what relief the workmen are entitled to regarding regularization of their services with all legal benefits including arrear wages."

It is seen in the case record that two applications supported by affidavit by the workmen and the union has been received with a prayer to withdraw the claim. Copies served on the management. Heard the management and workman who is present in Court. The petitions filed by the Union/Workmen are read over and explained to him to which he admitted to be correct. Hence the case is withdrawn as not pressed. Pass a No Dispute award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-2, धनबाद के पंचाट (संदर्भ संख्या 23/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/8/2005-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2005) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12012/8/2005-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/LABOUR COURT (NO. 2) AT DHANBAD

PRESENT :

Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 23 of 2005

PARTIES :

Employers in relation to the management of Canara Bank, Govindpur Branch, Dhanbad and their workman.

APPEARANCES :

On behalf of the workman : Mr. D. K. Verma, Ld. Advocate

On behalf of the employer : Mr. D. Mukherji, Ld. Advocate

State : Jharkhand Industry : Banking

AWARD

Dhanbad, the 13th September, 2012

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012/8/2005-IR(B-II) dated 3-3-2005.

SCHEDULE

"Whether the action of the management of Canara Bank, Govindpur Branch, Dhanbad in not reinstating Sh. Manoj Kumar Rajak in the service of the Bank in subordinate cadre (sub-staff-PTE) w.e.f. 18-11-2003 is justified ? If not, to what relief the concerned workman is entitled ?"

2. Workman Manoj Kumar Rajak is present but none represented the Management, nor any further Management witness produced.

The workman submits by filing a petition on his behalf that he does not contest the present Reference, so it may be closed and accordingly, it may be passed an order for no dispute award.

Pursued the case record. The present Reference case relates to an issue of not reinstating the workman in the subordinate staff of the Bank concerned w.e.f. 18-12-2003, since the workman himself declined to contest the case, the case is closed; and accordingly it is passed an award of no dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या सी जी आई टी-1/82 ऑफ 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/120/2004-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/82 of 2004) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12012/120/2004-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/LABOUR COURT (NO. 1), MUMBAI

PRESENT :

Justice Ghanshyam Dass, Presiding Officer

Reference No. CGIT-1/82 of 2004

PARTIES :

Employers in relation to the management of Indian Overseas Bank

AND

Their workman.

APPEARANCES :

For the Management : Mr. S. V. Alva, Adv.

For the Workman : Mr. J. P. Sawant, Adv.

State : Maharashtra

AWARD PART-I

Mumbai, the 10th day of January, 2007

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) vide Government of India, Ministry of Labour, New Delhi Order No. L-12012/120/2004-IR (B-II) dated 29-9-2004. The terms of reference given in the schedule are as follows :

> "Whether the action of the management of Indian Overseas Bank in removal from service of Smt. Ignasia Desouza w.e.f. 25-2-2003 is legal and justified ? If not, what relief is the concerned workman entitled to ?"

2. Smt. Ignasia Desouza (hereinafter referred to as the workman) was employed by the Indian Overseas Bank (hereinafter referred to as the Bank) on 4-1-1975 and was working as Special Asstt. at the relevant time in Nariman Point Branch. The workman was issued suspension letter dt. 25-5-2000 for certain acts of omissions and commissions by her while working at Nariman point Branch. She was issued the charge sheet dt. 19-12-2000 which is quoted below :

> "You had in collusion with Shri R. Parthan, Assistant Manager, Roll No. 17319, fraudulently debited on various occasion, without any supporting vouchers several current accounts where operations were infrequent and P & L account and transferred the funds to the Savings Bank Account in 98765 maintained by Shri R. Parthan. Such fraudulent debit and credit transactions were entered by you in the computer and the same were passed and verified by Shri R. Parthan. Thus, you in collusion with Shri R. Parthan, Asstt. Manager, misappropriated a sum of Rs. 12,25,759 and derived undue pecuniary benefit as shown in the Annexure-I.
>
> You had a collusion with Shri R. Parthan, Asstt. Manager, Roll No. 17319 fraudulently debited on various occasions without any supporting vouchers several current accounts where operations were infrequent and transferred the funds to the Savings Bank account no. 98328, a joint account maintained by you with Shri R. Parthan and subsequently the amounts were withdrawn by you Shri R. Parthan. Such fraudulent debit/credit transactions were entered by you and the same were passed and verified by Shri R. Parthan, Asstt. Manager.
>
> Thus, you in collusion with Shri R. Parthan, Asstt. Manager, misappropriated a sum of Rs. 54,000 and derived undue pecuniary benefits to yourself to Shri R. Parthan as shown in the Annexure–II.
>
> Thus, it is charged that :
>
> (a) By your above acts you have caused damage to the property of the Bank and its customer and thereby committed gross-misconduct within the meaning of para 17.5(d) of the Bipartite Settlement dated 14-12-1966 between the Bank and its workman as amended upto date.
>
> (b) By your acts as above are also prejudicial to the interest of the Bank within the meaning of gross-misconduct as defined in para 17.5(j) of the aforesaid Bipartite Settlement.

The relevant portions of the Bipartite Settlement are extracted below :

> 17.5(d) : Willful damage or attempt to cause damage to the property of the bank or any of its customers.
>
> 17.5(j) : Doing any act prejudicial to the interest of the Bank, or gross negligence involving or likely to involve the Bank in serious loss."

3. The domestic enquiry was initiated by the Bank for which Mr. K. Deivasigamani was appointed as Enquiry Officer and Shri A. S. Shanmuganathan was appointed as Presenting Officer of the Bank. The workman participated in the enquiry. She appointed Mr. Jage, Vice-President of All India Overseas Bank Employees Union as her Defence Representative. The Enquiry Officer found the workman guilty. The workman was served with a show cause notice by the Dy. General Manager of the Bank vide letter dt. 6-11-2002 along with the finding of the Enquiry Officer dt. 3-9-2002. Theworkman submitted her reply dt. 29-1-2003. The reply was not considered and Dy. General Manager of the Bank passed the final order of punishment dt. 25-2-2003 for removal from service w.e.f. 25-2-2003. The workman preferred the appeal as provided under the rules but the Appellate Authority without application of mind, mechanically dismissed the appeal vide order dt. 7-8-2003 and confirmed the final order of removal from service.

4. The workman has alleged that the domestic enquiry is not just and fair being not in consonance with the principles of natural justice for the following reasons :

> (A) It was alleged that the workman had in collusion with Mr. R. Parthan, Assistant Manager, Roll No. 17319 fraudulently debited on various occasions, without any supporting vouchers, several current accounts Mr. R. Parthan was also charged for the same allegation. However, no joint departmental proceedings were held for the alleged offence arising out of the same transactions. Non-conducting such joint departmental/ disciplinary proceedings have vitiated entire disciplinary proceedings.

(B) The documents in respect of disciplinary proceedings held against Shri R. Parthan were not made available to the workman to enable the workman to explain her conduct and defend her case effectively.

(C) The workman was not informed of the procedure of the enquiry proceedings. This has also resulted in violation of principles of natural justice.

(D) The Enquiry Officer also examined the Management witnesses and did not point out any evidence against the workman and did not ask any questions to the workman after closing the evidence by the Management.

(E) The Enquiry Officer merely gave the Exhibits numbers to the documents though these documents were not legally proved.

(F) The Enquiry Officer in haste completed the enquiry proceedings without taking into consideration the modus operandi adopted by Shri R. Parthan for debiting the transactions in question.

5. The workman has alleged that the findings of the Enquiry Officer are perverse for the reasons below :

(i) The Enquiry Officer failed and ignored to note the fact that debit and credit transactions in question were entered in the computer by Shri R. Parthan, by knowing the password of the workman because of his knowledge in operation of computer and the entire system of operation and thereafter using the said password for debiting and crediting the transactions in question, for his own benefits.

(ii) The Enquiry Officer failed and ignored to note that Shri R. Parthan was alone instrumental and responsible for debiting and crediting transactions in question, he has been found guilty for the said offence, and the amount so misappropriated by Shri R. Parthan has been recovered by the management from him only.

(iii) The Enquiry Officer failed and ignored to consider the submissions of the workman to the extent that the workman never entered the transactions in question in the computer.

(iv) The Enquiry Officer failed and ignored to consider the fact that some of the transactions in question were entered, passed and verified on the days when workman was on leave.

(v) The Enquiry Officer failed and ignored to note that some of the transaction in question were entered, passed and verified during the period prior to the transfer and posting of the workman at Nariman Point Branch and prior to the opening of the Joint account.

(vi) The Enquiry Officer ignored and failed to note that Shri R. Parthan was authorized by superiors to operate the entire computer system for the day and by misusing his knowledge in the computer system, he could know the password of members of the staff and could effect the transactions in question for his own benefit. The Enquiry Officer himself states that 'Dishonesty resides in panoramic view'—it aptly apllies to Mr. R. Parthan, who by his courteous behaviour, gentle manners etc. was enamoured by everyone. They were carried away by his exterior outlook which camouflaged his inner being. It is a case of deceitful acts coupled with unproven character, quite unbecoming of an officer, not worthy of emulations. As such he was most trusted by everyone not knowing his ulterior motives.

(vii) The Enquiry Officer ignored and failed to note that the word 'ISD' appeared in the printout of daily transactions, known as supplementary, in respect of transactions in question because Shri R. Parthan, who, because of his knowledge an experience did operate the computer system by knowing and using the password of the workman. This has been done by him in case of other members of the staff also and before posting of workman at the Nariman Point Branch.

(viii) The Enquiry Officer failed and ignored to consider fact that there was no evidence whatsoever to prove any sort of collusion between Shri R. Parthan and the workman.

(ix) The Enquiry Officer failed and ignored to note that there was a misappropriation of funds to the tune of Rs. 12.07 lacs by Mr. R. Parthan, Assistant Manager, at Nariman Point Branch, Mumbai, which was detected on 25th May, 2000. He had musused the password of the workman and also of some other officials of the branch for almost two years which went unnoticed for the simple reason that there were lapses in the branch procedure by the irresponsible officers. Mr. R. Parthan joined Nariman Point Branch in June, 1997 and the workman joined the branch on 17th Aug, 1998. Even before the workman joined the branch Mr. R. Parthan had put through a few

fraudulent transactions using the password of other officials. He has confessed his misdoings to the Chief Regional Manager, Regional Office, Cuffe Parade, Mumbai. Mr. R. Parthan has also repaid all the embezzled amount to the tune of Rs. 15 lacs much more than the detected amount, as early as September, 2000 after owning the responsibility.

(x) The Enquiry Officer failed and ignored to note the procedure lapses of the management as brought out by the Inspectors in their letter dated 2-6-2000 which are stated as below :

(a) Branch has not made any reference on the need for opening a joint account in the names of Mr. R. Parthan and Mrs. Ignasia Desouza who belong to diffferent official cadres and have totally un-identical social backgrounds.

(b) Branch has not monitored the operations in the SB account 98765 of Mr. R. Parthan which is quite volatile.

(c) Branch has not ensured whether there is any transactions of kite flying nature involved in the act of Mr. R. Parthan depositing 3 cheques in clearing for Rs. 1,00,000, Rs. 15,000 and Rs. 1,02,943 dated 5-3-1999, 12-3-1999 and 7-6-1999 respectively drawn by his wife on Canara Bank, Sanctacruz Branch. If transactions were not kite flying, then the source of funds for such huge amounts in his wife's SB account is to be ascertained later, if necessary.

(d) Vouchers are not stitched in chronological order of SB accounts number-wise for easy verification.

(e) Verification of vouchers by 1 line manger on the next day and tallying the number of vouchers with the daybook are not being done. Voucher register though maintained is not signed by any officials.

(f) Printouts of supplementaries, exceptional reports are not generated regularly, while the lot entires, printout though available and bound periodically does not bear the signatures of any officials. Storage of unbound lot entry statements is not satisfactory and it is simply dumped in the corner of the banking hall, thereby not bound in order of dates in few cases.

(g) Branch has not ensured that the operators do not leave their terminal without logging out. We find that the fictitious entries passed by Mr. R. Parthan has been verified with the passwords of Mr. M. Suseendran. The fraudulent transactions vetted by us were found to be transfer entries entered and passed by Mrs. Ignasia Desouza and Mr. R. Parthan.

(h) The narration in the SB statement is made as "By clearing", whereas the transaction code is mentioned as 'Transfer' in a few cases which was overlooked by the officials.

(i) The scrutiny of the officer order register reveals that Mr. Parthan was allotted Current Account department and the time of joining this branch during June, 1997 and continued in the same department till February, 2000.

6. The Bank filed the written statement and submitted that the enquiry is just and proper after according full opportunity at every possible stage and after complying of principle of natural justice. It is also submitted that the findings of the Enquiry Officer are based on the material available on record and they are not perverse.

7. The workman filed the rejoinder and reiterated the facts alleged in the Statement of claim and further asserted that the alleged amount of misappropriation to the tune of Rs. 13,65,000 was not mentioned in the charge sheet. In fact, the amount misappropriated was Rs. 12,25,759 by Mr. R. Parthan, Asstt. Manager who was found guilty for the said amount and the entire amount has been recovered from him and that he has already been removed from service. In fact, there was no collusion of the workman with Mr. Parthan nor she ever allowed Mr. Parthan to use her password. The entire allegation levelled against her are false and she is not liable for any alleged misappropriation.

8. The following issues were framed on 31-3-2006 :

(i) Whether the party proves that the principle of natural justice were followed by the management while conducting the disciplinary enquiry against the workman ?

(ii) Whether the workman proves that the findings of the Enquiry Officer are perverse ?

(iii) Whether the punishment of removal imposed upon the workman is disproportionate to the alleged misconduct and the action of the management is illegal and unjustified ?

The learned counsel for the parties have emphasized that Issue Nos. 1 and 2 be decided as preliminary issues. Hence, they are taken up accordingly at this juncture.

9. The workman filed her own affidavit in lieu of her examination in chief in support of the facts stated by her in her statement of claim. She has been cross examined by the learned-counsel for the Bank wherein she admitted that she is a member of Indian Overseas Banks Association. She had full faith in the Union which appointed Mr. G. V. Jage as her Defence Representative. She was guided by the Union and the Defence Representative. She admitted that the categories of Mr. Parthan and her are different. Mr. Parthan being Asstt. Manager was Officer by the Bipartite Settlement was not applicable to Mr. Parthan. She was governed by the Bipartite Settlement. She had opened Joint Account with Mr. Parthan who was not blood related to her. I addition to the Joint Account, she had a Savings Account in her name and she also opened Fixed Deposit and Recurring Deposit Account in her name and also in the name of Mr. Parthan along with her in which Mr. Parthan was First holder and she was the second holder. It is true that funds were transferred from Joint Account of herself and Mr. Parthan to Fixed Deposit Account of herself and her family members but the same were not transferred by her. She did not know the password of any other employee since it is private and personal. The password is required to transfer transaction of any amount and when the transactions goes to the higher authority it uses its password to clear transaction. She also admitted that she received the charge sheet but not the annexures. She received the dates of the enquiry. She received the enquiry proceedings. She participated in the enquiry along with Defence-representative. No question was put to management witness No. 1 by the Defence representative since the Union asked her not to put any question. It was the first enquiry of her defence representative and hence the enquiry could not be properly defended. She was not put any question by the Enquiry Officer nor she was asked to bring her defence representative. She and her Defence representative had prepared the brief in writing to be submitted to the Enquiry Officer/She had received the copies of the Enquiry Officer. She and her Defence representative had put their signatures to all the enquiry proceedings. What transpired in the enquiry is reflected by the enquiry proceedings. She was given the report of the Enquiry Officer. Her Defence representative was not familiar with the enquiry procedure since it was his first enquiry entrusted to him by the Union which fact came to her knowledge when the enquiry was over. She had no communication with the Union since she was removed from service. She did not make any request to the Enquiry Officer to supply copies of such and such documents. She was given personal hearing by the punishing authority.

10. The Bank filed the affidavit of Shri Deivasigamani, Officer, Conduct of Disciplinary action, Central Office who was the Enquiry Officer in the instant case in lieu of examination in chief and stated about the facts in detail to show that proper procedure was followed and the enquiry was conducted in most fair manner after following all the principles of natural justice. He has been cross examined by the learned counsel for the workman. There is nothing worth which may help the workman.

11. The Bank has filed the enquiry proceedings before this Tribunal which is on record. The documents filed by the parties are admitted documents.

12. I have heard the learned counsel for the parties and gone through the record, the written submissions made by the parties are also perused.

FINDINGS :

13. **Issue No. 1 :** After going through the evidence available on record, I find nothing to infer for a moment that there is any violation of principles of natural justice. All the circumstances shown by the workman quoted above have got no bearing to show any violation which may cause any prejudice to the workman in defending enquiry. The only contention through out is that the collusion is alleged by the Bank with Mr. R. Parthan for whom separate enquiry was held and not jointly with the workman. She was not made available the copies of the disciplinary proceedings against Mr. Parthan to enable her for explaining her conduct of defence. I feel that the joint enquiry could not be held there since Mr. Parthan was an Officer and was not governed by the Bipartite Settlement. Moreover, the workman was governed by the Bipartite Settlement and hence a separate enquiry was obvious. Admittedly, R. Parthan has already been held guilty and punished by removal from service and it is also admitted that he alleged sum of misappropriation running to the tune of Rupees more than 12 lakhs has been recovered from Mr. Parthan. The fact that joint departmental enquiry was not held with Mr. R. Parthan does not show any violation of principle of natural justice. It is further alleged that the workman was not explained the procedure of enquiry proceedings. It is incorrect. The procedure was well known to the workman who participated through out along with Defence representative. The allegation that it was the first enquiry of the Defence representative has got no bearing for showing any violation of principle of natural justice. She had full faith in her Defence representative who was appointed by the Union and she had full faith in the Union. She was guided by the Union. If the Defence Representative did not put any question to Management witness No. 1, it did not mean that any violation of principles of natural justice was there. All the relevant documents were supplied to the documents who never complained in writing that she was not supplied the copies

of such and such documents which caused prejudice to her. The fact that the workman was not put any questions or was not asked to bring any defence witnesses also did not cause any prejudice since it was never complained of. The workman admittedly filed written submissions to the Enquiry Officer after the recording of the evidence of the Bank. She also filed reply to the report of the Enquiry Officer when a copy there of was supplied to her along with the show cause notice. She was given a personal hearing by the punishing authority and the proposed punishment was bit modified after her personal hearing.

14. Considering the record, I do not find anything worth for which it can be held that the enquiry is not just and fair or there is any violation of principles of natural justice.

15. **Issue No. 2 :** A number of points raised by the workman, quoted above, did not show any merit in concluding that the finding of the Enquiry Officer is not based on evidence on record and it is perverse. The entire basis is that Mr. R. Parthan was instrumental and responsible for debiting and crediting transactions for which he has already been found guilty by the Bank but this fact was ignored and not considered by the Enquiry Officer. All the transactions were entered, passed and verified by Mr. R. Parthan who, because of his knowledge and experience did operate the computer system by knowing and using the password of the workman and also in case of other members of the staff. In fact, Mr. Parthan was a trusted Officer of the Bank by his superiors on account of which his exterior outlook camouflaged his inner being where he was guilty and dishonest and not worth of becoming an Officer. The misappropriation of the funds were made by Mr. Parthan from whom the recovery to the tune of Rs. 12.05 lakhs has been made by the Bank. In fact no fraudulent transaction was done by the workman for which she may be held guilty.

16. The facts and circumstances reported by the workman to show that they were not considered by the Enquiry Officer in its report are not material for holding that the report of the Enquiry Officer is perverse which is self explanatory. The Enquiry Officer has considered the matter in just perspective. It has found the lapses on the part of the Officers of the Bank. It has still correctly found the workman guilty for the charges. The findings of the Enquiry Officer are based on sufficient evidence available on record which are not to be brushed aside for the facts and circumstances emphasized by the workman. The admission made by the workman in her cross-examination make it clear that she opened a number of accounts jointly with a stranger. i.e. Mr. R. Parthan and operated them for transfer of a number of transactions for which the collusion of the workman with Mr. Parthan is crystal clear. It is clear that both of them joined hands and the workman cannot escape responsibility since Mr. Parthan has already been removed from service. The fact that the recovery of misappropriated money has been made from Mr. Parthan does not absolve the workman from the charges. It has to be seen as to whether the Enquiry Officer was right in holding the workman guilty. I find sufficient evidence on record on the basis of which it can be safely concluded that the Enquiry Officer was right in holding the workman guilty for the charges. I do not find anything worth for which it may be concluded that the findings of the Enquiry Officer are perverse.

17. Hence, I conclude that the findings of the Enquiry Officer are not perverse.

18. In view of the aforesaid findings the matter is now posted for Award-Part II for which call the parties on 7-2-2007.

Justice GHANSHYAM DASS, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/LABOUR COURT NO. 1, MUMBAI

PRESENT :

Justice G. S. SARRAF, *Presiding Officer*

Reference No. CGIT-1/82 of 2004

PARTIES :

Employers in relation to the management of Indian Overseas Bank

And

Their workman (Smt. Ignosia D'souza)

APPEARANCES :

For Indian Overseas Bank : Shri Alva, Adv.

For the Workman : Shri Jaiprakash Swant, Adv.

State : Maharashtra

AWARD PART-II

Mumbai, the 13th day of September, 2012

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the Schedule are as follows :

> "Whether the action of the management of Indian Overseas Bank in removal from service of Smt. Ignosia Desouza w.e.f. 25-2-2003 is legal and justified ? If not, what relief is the concerned workman entitled to ?"

It is not necessary to narrate the facts here as the facts have been stated in detail in Award Part-I dated 10-1-2007 passed by this Tribunal.

Following are the Issues :

(1) Whether the party proves that the principles of natural justice were followed by the management while conducting the disciplinary enquiry against the workman ?

(2) Whether the workman proves that the findings of the Enquiry Officer are perverse ?

(3) Whether the punishment of removal imposed upon the workman is disproportionate to the alleged misconduct and the action of the management is illegal and unjustified ?

(4) What relief ?

Issue nos. 1 and 2 have been decided against the second party workman by Award Part-I dated 10-1-2007 passed by this Tribunal. Thereafter the second party workman has filed her affidavit and she has been cross-examined by learned counsel for the first party.

Heard Shri Jaiprakash Sawant, learned counsel for the second party workman and Shri Alva learned counsel for the first party on the remaining Issues.

Issue No. 3 : The workman was charged as under :

You had in collusion with Shri R. Parthan, Assistant Manager, Roll No. 17319, fraudulently debited on various occasions, without any supporting vouchers several current accounts where operations were infrequent and P & L account and transferred the funds to the Savings Bank Account No. 98765 maintained by Shri R. Parthan. Such fraudulent debit and credit transactions were entered by you in the computer and the same were passed and verified by Shri R. Parthan. Thus, you in collusion with Shri R. Parthan, Asstt. Manager, misappropriated a sum of Rs. 12,25,759 and derived undue pecuniary benefit as shown in the Annexure I.

You had in collusion with Shri R. Parthan, Asstt. Manager, Roll No. 17319 fraudulently debited on various occasions without any supporting vouchers several current accounts where operations were infrequent and transferred the funds to the Savings Bank account No. 98328, a joint account maintained by you with Shri R. Parthan and subsequently the amounts were withdrawn by you/Shri R. Parthan. Such fraudulent debit/credit transactions were entered by you and the same were passed and verified by Shri R. Parthan, Asstt. Manager. Thus, you in collusion with Shri R. Parthan, Asstt. Manager, misappropriated a sum of Rs. 54,000 and derived undue pecuniary benefits to yourself/ to Shri R. Parthan as shown in the Annexure II.

Thus, it is charged that :

(a) By your above acts you have caused damage to the property of the Bank and its customer and thereby committed gross misconduct within the meaning of the para 17.5(d) of the Bipartite Settlement dated 14-12-1966 between the Bank and its workmen as amended upto date.

(b) Your acts as above are also prejudicial to the interest of the Bank within the meaning of gross misconduct as defined in para 17.5(j) of the aforesaid Bipartite Settlement.

The workman was found guilty of the above charges.

The Disciplinary Authority awarded the punishment of removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment. The workman preferred an appeal which was dismissed by theAppellate Authority.

The Reference was then made and this Tribunal in Part-I Award passed on 10-1-2007 held that Enquiry Officer was right in holding the workman guilty of the charges levelled against him and that the enquiry was just and fair and there was no violation of principles of natural justice. The Tribunal further held that the findings of the Enquiry Officer were not perverse.

Once there has been an enquiry in accordance with principles of natural justice and the findings recorded at that enquiry are not frowned upon then this Tribunal should not interfere with the quantum of punishment unless the punishment is shown to be vitiated by malafides. This certainly is not the position in the present case.

The Bank Officer is required to exercise higher standards of honesty and integrity. The Officer deals with money of the depositors and the customers. The charges against the workman are serious in nature. Hence, the punishment imposed by the Disciplinary Authority appears to be rather on the conscessional side.

I am, therefore, clearly of the opinion that the punishment imposed upon the workman is no way disproportionate to the charges proved against her. The action of the first party is perfectly legal and justified.

Issue No. 3 is, therefore, decided against the workman.

Issue No. 4 : The workman is not entitled to any relief.

Award Part-II is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 23 जनवरी, 2013

का. आ. 424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 193/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-12-2012 को प्राप्त हुआ था ।

[सं. एल-12012/293/1995-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd January, 2013

S.O. 424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 193/97) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 22-12-2012.

[No. L-12012/293/1995-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 14-9-2012

Present : Shri S.N. NAVALGUND, Presiding Officer

C.R. No. 193/97

I Party	**II Party**
Shri C. Bheema Raju, C/o Hotel Ashoka M.B.T. Road, Palamaner Taluk, Chittur District, Andhra Pradesh.	The Personnel Manager, Canara Bank, Head Office J.C. Road, *Bangalore-560002*

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/293/1995-IR(B-II) dated 10-2-1997 for adjudication on the following Schedule :

SCHEDULE

"Whether the action of the management of Canara Bank is justified in removing the name of Shri Bheema Raju from the panel of daily wagers on grounds of misconduct/misbehaviour? If not, to what relief the workman is entitled ?"

2. Consequent to receipt of the reference pursuant to the notices issued by this court since the second party alone entered the appearance through an advocate my learned predecessor observing the first party who raised this dispute was not made any efforts to know the progress of the case nor he has complied the mandatory provisions rejected the reference by his award dated 27-11-1998. Aggrieved by this award when the first party workman approached the Hon'ble High Court in WP No. 19851/2001 (L-TER), the Hon'ble High Court quashed the said award by order dated 9-8-2005 and remitted back with a direction to restore the reference in CR No. 193/97 to its original file and to hear and dispose of the reference on merits and in accordance with law with further direction to both parties to appear before the tribunal on 10-10-2005. Consequent to the said order though the parties did not enter their appearance this tribunal issued notices to both of them and thereafter both entered their appearances through their respective advocates. Then the learned advocate appearing for the first party filed his claim statement on 12-5-2006 whereas the learned advocate appearing for the second party filed the counter on 6-10-2006.

3. Having regard to certain allegations made in the claim statement regarding fairness of the domestic enquiry my learned predecessor while framing the preliminary issue as under touching the fairness of the Domestic enquiry :

"Whether the domestic enquiry conducted against the first party by the second party is fair and proper?"

Then posted the matter for evidence of the second party to substantiate the same. The learned advocate appearing for the second party while examining the enquiry officer got exhibited show cause notice dated 30-8-1990; explanation dated 1-9-1990 of the first party to show cause notice; Order appointing Shri B.V. Janardhan, as enquiry officer; notice of enquiry dated 9-10-1990 sent by the enquiry officer to the first party to attend the enquiry; proceedings of enquiry along with management documents; report/findings of the enquiry officer dated 27-10-1990 and orders of the second party dated 12-11-1990 informing the first party deleting his name from the panel of daily wagers as Ex. M1 to M7 and thereafter though several adjournments were given for his cross-examination same were not availed and on 19-8-2010 the counsel for the first party filed a memo to the effect that the first party workman has taken from him the NOC and entire file from him and that he has no instruction to proceed with and thereafter inspite of providing number opportunities the first party since did not avail after affording reasonable opportunity to the first party to lead

his evidence when the same was not availed taking that he has no evidence on preliminary issue, after hearing the learned advocate appearing for the second party the preliminary issue came to be answered in the affirmative i.e. the domestic enquiry conducted against the first party being fair and proper. Even thereafter there was no representation for the first party and ultimately hearing the learned advocate appearing for the second party the matter came to be posted for award.

4. The charge against the first party was that he who was in the panel of daily wagers had opened an SB account bearing No. 13345 at K.P. West Branch, Bangalore, on 18-8-1989 issued a cheque bearing No. 762671 to 680 unauthorisedly affixing 'E' mark on the cheque leaves to give an impression that he was an employee of the bank. On 19-11-1989 its visited his Nazarbad, Mysore branch and met Shri S.G.M. Prabhu the then Manager of the branch and asked for a sum of Rs. 50/- against the cheque given by him bearing no. 0762678 dated 20-11-1989 and discounted the same and when the same was returned for the reason 'refer to drawer' and further it was learnt that he had borrowed money from various staff of K.P. West Branch and failed to return and availed DPN : 162/85 for Rs. 480/- at Neelasandra Branch of the second party and the same was overdue and that on 17-8-1990 at about 11 AM he went to Kalasipalyam branch of the second party and entered the cabin of the Sr. Manager and shouting in a high pitched voice 'how you have engaged a person other than the one on the panel' and thereby threatened the manager that he would face dire consequences and then after issuing a show cause notice dated 30-8-1990, on his unsatisfactory reply taking a decision to hold the Domestic Enquiry while appointing Shri B.V. Janardhan as enquiry officer the enquiry was conducted and on submission of the enquiry report the charge being proved and after giving him an opportunity of hearing his name has been deleted from the panel of daily wagers.

5. Since the first party failed to demonstrate the domestic enquiry conducted against him by the second party being not fair and proper and issue in that regard has been answered in favour of the second party/ management, it was for the first party to demonstrate that the finding of the enquiry officer is perverse and the punishment imposed is disproportionate to the charge proved against him. But as already adverted to by me above, the learned advocate appearing for him made submission that the first party while taking back the file from him had not given instruction to proceed, he also did not make any alternate arrangement to prosecute the reference on his behalf to demonstrate the finding of the enquiry officer being perverse. Under the circumstances I find no reason to hold the enquiry finding being perverse. Since the act of the first party who was a daily wager in the panel of the second party when alleged to have entered the cabin of the Sr. Manager and gave him a threat such an act of indiscipline or insubordination was sufficient to initiate a disciplinary proceedings and on its proof it was not possible for the second party to take his services any more as daily wager. Therefore, even the punishment imposed removing his name from the list of the panel cannot be said to be disproportionate. Hence I arrived at the conclusion of rejecting the reference. In the result I pass the following Award.

AWARD

The reference is rejected holding that the action of the management of Canara Bank is justified in removing the name of Shri Bheemaraju from the panel of daily wagers on grounds of misconduct/ misbehaviour and he is not entitled for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 14-9-2012).

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/198/2002-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/198/2002-IR (C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 19 of 2003

Parties : Employer in relation to the management of Katras Area of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : Mr. B.B. Pandey, Ld. Advocate

On behalf of the management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 19th Dec., 2012

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/198/2002. IR (C.I) dated 24-1-2003.

SCHEDULE

"Whether the demand of the Koyla Inspat Mazdoor Panchayat from the Management of BCCL, Katras Area to provide employment under clause 9.4.0. of NCWA-VI to Smt. Munia Devi, the dependant wife of Late Bandhu Turi is proper and justified? If so to what relief is the said dependant of the deceased workman entitled."

2. The case of the sponsoring union for the petitioner is that since workman Bandhu Turi, a permanent employee at Katras Chaitudih Colliery of M/s. BCCL had expired on 4-2-1995 in harness, his wife petitioner Munia Devi submitted her application with all the relevant papers for her employment in place of her deceased husband under the provision of NCWA. Her application was forwarded to the Head Quarter (H. Qr.) of M/s. BCCL for approval and final order. The H. Qr. at Koyla Bhawan by adopting its lingering attitude had/has been pressing her to accept monetary compensation in lieu of for employment as provided in N.C.W.A.-V. Despite the information to the management of her son Fulchand Turi as physically unfit for a work in a colliery, the management unreasonably attempted to see her son for employment. As such the demand of the Union for the employment of Smt. Munia Devi, the dependant wife of Late workman Bandhu Turi is proper and justified, and she is entitled to her employment w.e.f. her application for it, and also to monetary compensation w.e.f. 4-2-1995, the death date of her husband until her employment with other proper benefit.

Denying the only policy of offering monetary compensation in such cases, it is alleged in its rejoinder of the petitioner that it is the option of the dependant to accept either of them monetary compensation or employment.

3. Whereas with specific denials, the management case is that Late Bandhu Turi was working as General Mazdoor and died on 4-2-1995. His wife Smt. Munia Devi had requested for employment. However, as per policy of the Company as also per provisions of the N.C.W.A.-V, it was communicated to the claimant to have monetary compensation in lieu of the employment, but she did not accept the same, and insisted for her employment in place of her husband. She had also intimated that her son Fulchand Turi was too weak and unfit for employment. The Management as per provision of NCWA-V had rightly decided to give monetary compensation till her age of 60 years in lieu of employment, yet she was adament to her demand for employment which could not be acceded to. Thus the demand of the claimant is not just, proper and fair. She is not eligible for any relief in the case.

The management in its rejoinder that as per practice, the management had tried to suggest the petitioner to submit the papers for employment of her son, if she liked, but she informed of her son too physically unfit for employment. The monetary compensation if accepted by her would be payable to her prospectively after her consent to it following the order of the Competent Authority.

FINDING WITH REASONING

4. In this case WW1 Munia Devi, the petitioner herself for the Union, and MW1 Manish Mishra, the Personnel Manager, Katras Area for the Management have been examined.

Mr. B.B. Pandey, the Learned Counsel for the Union/ Petitioner, submits that Late Bandhu Turi, the General Mazdoor, Katras Choitudih Colliery had expired in harness in 1995 (his death certificate Ext. W.1), so his wife petitioner Munia Devi (WW1) had submitted her application (its photocopy marked as Ext. W.3 with objection) for her employment; she also filed her three letters dt. 20-1-1997, 1-9-97 and 10/14-7-1997 of the management (Ext. W.2 series) but the management told her to get her compensation but not the employment despite her representation/reporting about her one son named Fulchand Turi being all-along ill of T.B. due to which he did not file for his employment. Further it is submitted by Mr. Pandey that the option for employment or for compensation is exerciseable by the petitioner, but not by the management, so he is entitled to her employment in the case.

5. Contrary to it, the contention of Mr. U.N. Lal, the Learned Advocate for the Management is that the application of the petitioner for her employment was forwarded to the H.Qr. Koyla Bhawan on 17-5-1996 (Ext. M.1) but the management as per letter dt. 16-7-1996 (Ext. M.2) requested her for monetary compensation in lieu of

her employment, but she as per her letter dt. 2-8-1996 (Ext. M.3) requested by her petition dt. 2-8-96 (Ext. M.3) for her employment as also stated by MW1 Manish Mishra. According to the Management witness, the Chief General Manager as per his letter dt. 5-10-2001 (Ext. M.4) also replied in her I.D. Before the ALC (C), Dhanbad, and since she was above 45 years in view of the provision of the NCWA-V clause 9.5.0., so she was offered for monetary compensation in place of her employment, admittedly the management has not submitted any document to show the age of the petitioner above 45 years at the relevant time.

6. On perusal and consideration of the material and having heard the arguments of both Learned Counsels for the respective parties, I find it pertinent to note that neither of the parties has pleading and proof at the point what her age was at the relevant time, and the ground of her age being above 45 years for insistance of the management upon only payment of monetary compensation to her. Moreover the management as per letter dt. 16-7-1996 of the Area Personnel Manager, Katras Project Area appears to have failed to justify the reasons for its option to the petitioner for monetary compensation in lieu of employment (Ext. M.2). So the argument of Mr. U.N Lal, the Ld. Advocate for the management is not tenable.

In the present case, it is pertinent to mention emphatically that the provisions of NCWA-V coming into force, w.e.f. 1-7-1991 covering the case of the petitioner does not invest the management authorities to offer such option to the widow petitioner for monetary compensation without any reason, rather clause 9.5.0 NCWA-V (amended in place of clause 9.4.0 NCWA-VI in the written statement of the petitioner) under its sub-clause (ii) provides in favour of the female petitioner her option either to accept the specified monetary compensation or her employment as the dependant of her deceased husband. Despite her deinclination for acceptance of a monetary compensation coupled with her request for her employment as per her letter dt. 2-8-96 (Ext. M.3), her due employment at the relevant time was unconsidered by the management without any justified reasons.

7. In view of the aforesaid findings, I would like to respond it in the Terms of the Reference as such :

> The demand of the Koyla Ispan Mazdoor Panchayat, the Union from the management of BCCL, Katras Area to provide employment under 9.4.0 of NCWA-VI (amended as 9.5.0 of NCWA-V) to Smt. Munia Devi, the dependant wife of Late Bandhu Turi Ex-Employee, is quite proper and justified, so the said dependant of the deceased workman is entitled to her employment subject to the determination of her age by the Medical Board of the Company within two months from the receipt of the Award after its publication in the Gazette of India. Let a copy of the Award be sent to the Ministry of Labour & Employment, Government of India for information and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **बी सी सी एल** के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 74/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/104/1997-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/104/1997-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Present : SRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 47 of 1998

Parties	:	Employer in relation to the management Bastacola Area of M/s. BCCL and their workman.
Appearances :		
On behalf of the workman	:	Mr. D. Mukherjee, Ld. Adv.
On behalf of the Management	:	Mr. U.N. Lal, Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 13th December, 2012

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/104/97-IR(C-I), dated 17-3-1998 :

SCHEDULE

"Whether Shri Ram Brich Turi, is son of Shri Khiru Turi who got employment under para 9.4.3. in place of his father and the action of the management in dismissing Shri Ram Brich Turi is justified? If not so, to what relief Shri Ram Brich Turi is entitled to ?"

2. The case of the Bihar Colliery Kamgar Union for workman Ram Brich Turi in brief is that though he had unblemishedly been serving as permanent employee since his employment as dependant son of Khiru Turi alias Late Babu Lal Turi at Bera Colliery suddenly after lapse of several years, the local management with notice to victimize issued a false and frivolous charge sheet dt. 20-1-93, to which he had replied, denying the charge emphatically; even then the management caused to hold the invalid and irregular departmental enquiry; then seeing the illegal and adament attitude of the management, the union served a strike notice dt. 29-7-96 for revocation of the illegal suspension order. While the conciliation proceeding was pending, the management dismissed him from service, but at its challenge by the Union and on appreciation of legal position, the management as per its letter dt. 29-8-96 informed the workman of keeping in abeyance his dismissal till further order. The workman had before the management several documents Service Excerpt, LTC Bill, Form 'F' even in service book proving his relationship with the person/ father Khiru Turi @ Babu Lal Turi; and on that basis, he had got employment. In spite of it the biased Enquiry Officer held the workman guilty of the charges on basis of some alleged unproved documents. The enquiry was not conducted as per principle of natural justice, as the workman was not afforded full opportunity. Despite unproved charges he was dismissed by an unauthorised person. The workman had represented to the management several times against his illegal dismissal. The strike notice also failed for adamancy of the management.

Further alleged by the Union that neither any suspension allowance nor any Second Show Cause notice was given to the workman, resulting in great prejudice to him. Reinstatement of a Miner/Loader getting his day's wages by giving production at all events will not prejudice to the interest of the nation and economy. The dismissal is too harsh, so the action of the management is illegal and unjustified.

No Union filed any rejoinder to the written statement of the management in the case.

3. Whereas categorically denying the aforesaid allegations of the Union, the case of the management is that one Ram Brich Turi was employed as M/Loader in place of his father Late Babu Lal Turi U/R Clause 9.4.3 of the NCWA at Bera Colliery while verifying the antecedents of Sri Ram Brich Turi. Over the contrary reports of the B.D.O. and the Supdt. of the Police of Giridih that Ram Brich Turi was the son and the brother of Babu Lal Turi respectively the Dy. Commissioner, Giridih reported that father's name of Ram Brich Turi is not Babu Lal, rather Babu Lal is his elder brother. So he was issued charge sheets as per letter No. BC/Pers/CS/93/75 dt. 25-1-93 for furnishing false information for the purpose of employment and as per letter No. BCCL/Pers/IR/M/52/97/5439 dt. 10-7-1997. He submitted his reply to it but it was found unsatisfactory. As such Sri V. Kumar, Dy. Personnel Manager, fairly and properly and as per rule of natural justice held the Domestic Enquiry, in which the workman fully participated, and holding him guilty of the charge, had submitted his enquiry report of which a copy as per the letter 1648 dt. 22/26th June, 1996 was served upon the workman for further explanation. Thereafter the charge being of serious nature, the management dismissed him from service as per Order/Letter No. BC No./SC/PO/ Dismissal/97/854 dt. 13/14th May after the approval of the G.M. The workman deserves no relief whatsoever.

It is also alleged that BCCL is a Govt. Company u/s 161 of the Companies Act, so the employees of the Company are public servant u/s 21/(1) of the I.P.C. Consequent upon the departmental enquiry, the Union served a strike notice dt. 29-7-1996 demanding for revocation of suspension order issued to the workman, but it failed on 20-1-1997 as a result of the meeting held with the Union on 9/10th August, 1996.

FINDING WITH REASONING

4. In this case, after the full examination of MWI. Santosh Narayan Sinha, Sr. Manager (Admn.), Koyla Bhawan for the management, and WWI Ram Briksh Turi, the workman himself for the Union on the Preliminary issue, Ld. Advocate concerned for the Union admitted the domestic enquiry as fair, proper and in accordance with the principle of natural justice, so also it was confirmed as per the order dt. 5-3-2012 of the Tribunal. Thus, it came up for hearing final argument on merit.

5. Firstly, the contention of Mr. D. Mukherjee, Ld. Advocate for the Union is that initially the Enquiry Officer in the Original Enquiry Proceeding had held that no charges were proved, so he had no legal authority to suggest any method for proving the charges, as he was acting as a Quasi Judicial Authority; moreover, neither the alleged SP's report nor the alleged D.C.'s report was proved before the Enquiry Officer by an authentic person. Further it is contended by Mr. Mukherjee, the Ld. Advocate for the Union that merely tendering the documents and not

proving the content thereof cannot be accepted as a valid document in view of the decision of the Hon'ble Apex Court reported in 2009 LLR-252 (SC), Roop Singh Negi Vs. Punjab National Bank & Ors., and that as per the Judgment of Hon'ble Supreme Court reported in the SCL (584–1993) Vol. III page 485, State Bank of India & Ors Vs. D.C. Agarwal, 'while imposing major or minor punishment, the Disciplinary Authority cannot act on the materials which was neither shown nor supplied to delinquent'.

6. In response to it Mr. U.N. Lal, the Ld. Counsel for the management has submitted in view of the admission of the Union/Workman that the domestic enquiry was held fair and proper and in accordance with the principle of natural justice as also accordingly ordered by this Tribunal on 5-3-12 Union cannot raise the matter of domestic enquiry as unfair and improper.

His further argument is that MWI Santosh Narayan Sinha, the Sr. Manager (Admn.), Koyla Bhawan as the Representative clearly deposed in letter para 4 at the Preliminary Enquiry that he had proved the S.P. Report against the workman that the finding in the Enquiry Report (Ext M. 7 deals with the facts that on account of contradictory reports of the BDO and the S.P. concerned about the relationship of the workman as son/brother of original workman Babulal Turi of Village Chirutia, P.S. Ahilyapur Distt. Giridih respectively and the Enquiry Officer mentioned in his enquiry report that on getting the report of the D.C., Giridih about the present workman as son of Babulal Turi, he (the Enquiry Officer) completed his enquiry report, finding the charges levelled against Ram Briksh Turi (The present workman) proved, so at the approval of the GM as per his letter dt. 4-5-1995, the workman's dismissal was quite legal and justified.

7. On perusal of the materials available on the case record, I find that the Union/Workman has neither pleading nor a statement nor a protest even in his second show about the non supply of any document like D.C.'s report of the identity of the workman. It is indisputable fact that the domestic enquiry was related to the verification of the antecedents relationship of the employee (Babu Lal Turi) in lieu of whom, the workman had got his provisional appointment as R.R. U.G. Miner/Loader as per the terms and conditions of his appointment.

8. The Enquiry Report (Ext.M. 7) manifests the helpless of the Enquiry Officer to give any finding into the charge unless the matter (relationship) was referred to the D.C. for clarification over its discrepencies about it on the contradictory report of the B.D.O. and the S.P. concerned. The workman was provisionally appointed in 1992 and the Enquiry set up in 1993. So the Management had legally the power to verify the antecedents/ relationship of the workman with the original deceased workman Babu Lal Turi through an independent Government Authorities concerned. Finally the D.C.'s report dt. 1-3-1993 with its forwarding letter dt. 28-11-94 of the A.D.M. Incharge concerned appeared to have been proved marked as Ext. II and Ext. I respectivley on behalf of the the management in the enquriy as also noted the Enquiry Report.

9. The plea of Mr. Mukherjee, the Learned Counsel for the Union/Workman that despite full acknowledgement of the Service Excerpt, L.T.C. Bill and copy of L.T.C. Register for the year 1984 to 1986 of Late Babulal Turi all bearing the name of present workman as his son of Late Babulal Turi II, so his dismissal based on the D.C.'s report is quite illegal, is not tenable, as neither the workman has put any protest against it even in his second show dt. 27-6-1996 (Ext. M.6) nor he has admittedly produced any document on his behalf to prove his claim as son of Babulal Turi known as Khiru Turi. Moreover, the Union has no pleading for the non-show or non-delivery of the D.C.'s report to the workman.

In the light of the aforesaid discussed facts as stand before me the said rulings appear to be wide off the mark.

10. Under these circumstances, it is awarded in the terms of the Schedule to the present reference as such it is held :

> That Sri Ram Brich Turi is the son of Sri Khiru Turi, but he got employment under para 9.4.3. not inplace of his father, rather falsely as son of Babu Lal Turi, Ex-employee of Bera Colliery, so the action of the management in dismissing him for giving the false information one particular for the purpose of facts required by the Company, his misconduct under S.O. 26.1.12 of the Certified Standing Order VI is quite legally justified. The workman Ram Brich Turi is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 102/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/560/2000-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2001) of the Central Government Industrial Tribunal-cum-Labour

Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/560/2000-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 102 of 2001.

Parties : Employer in relation to the management of Sijua Area of M/s. BCCL and their workman

APPEARANCES :

On behalf of the workman : Mr. D. Mukherji, Ld. Adv.

On behalf of the management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th December, 2012

AWARD

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/560/2000-IR (C-I) dt. 22/26-3-2001 :

SCHEDULE

"Whether the demand of the union for regularisation of Sri R.P. Saw, Clerk Grade-I as Time Keeper Incharge in Special Grade from 1994 is proper and justified? If so, to what relief is the concerned workman entitled ?"

2. Neither Representative for the Bihar Colliery Kamgar Union nor workman R.P. Saw appeared nor Mr. D.K. Verma, the Learned Advocate for the management is present nor MW produced.

Perused the case record. I find the present reference case relates to an issue for regularisation of the workman R.P. Saw, Clerk Grade I as Time keeper Incharge in Spl. Grade from 1994. Workman Rajender Pd. Saw, the employee of Sijua Area of M/s. BCCL by filing a petition with its enclosure on 7-1-2012 has requested the Tribunal for the closure of his reference case on the ground that the management concerned has granted his promotion as a clerical Gr. Spl. from Clerk Grade I as per demand in the schedule of the reference as per the office order Ref. No. GM/SA/Admn./09/6155 dt. 28/30-10-2009, so he does not intend to contest the case. In view of the aforesaid fact, it stands evident that no industrial dispute exists, because the workman is satisfied with the promotion to the Clerical Grade Special as per the said office order of the management. Hence the case is closed and accordingly, an Award of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 109/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/232/2004-आई आर (सी-1)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/232/2004-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 109 of 2005.

Parties : Employer in relation to the management of Ramkanali Colliery Katras Area of M/s. BCCL and their workmen

APPEARANCES :

On behalf of the workman : Mr. N.M. Kumar, Ld. Adv.

On behalf of the management : Mr. U.N. Lal, Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 10th December, 2012

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/232/2004-IR (C-I) dt. 09-12-2005 :

SCHEDULE

"Whether the action of the management of Ramkanali Colliery of M/s. BCCL in not providing employment to Smt. Beli Devi, the dependant wife of Late Tulsi Bhuia as per the provisions of para 9.3.2. of NCWA is justified? If not, to what relief is said Smt. Beli Devi entitled ?"

2. Neither Mr. N.M. Kumar, the Ld. Advocate for the Union/Petitioner Smt. Beli Devi appeared nor any witness for the evidence of the petitioner produced despite ample opportunities for it. But Mr. U.N. Lal, the Ld. Advocate for the management is present.

Perusal of the case record reveals the fact that the case has been pending for the evidence of the petitioner Smt. Beli Devi, the dependant wife of Late workman Tulsi Bhuia since 11-1-2012, for which Regd. notices were issued to the Union concerned on its address noted in the Reference, even then neither the Union Representative nor the petitioner appeared for her evidence in support of her claim for employment as per the provisions of NCWA. The conduct of the Union Representative as well as that of the petitioner shows that they are not interested in pursuing the case.

Under these circumstances, the case is closed and accordingly an order of No Industrial Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 79/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/132/2002-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/132/2002-IR (C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 79 of 2002.

Parties : Employer in relation to the management of Moonidih Colliery, Western Jharia Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Mr. D. Mukherjee, Ld. Adv.

On behalf of the management : Mr. U.N. Lal, Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 10th December, 2012

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/132/2002-I.R. (C.I.) dated 7-10-2002.

SCHEDULE

"Whether the action of the management of Moonidih Colliery of M/s. BCCL in denial employment to Smt. Shanti Devi wife of Shri Tahal Modi on compassionate ground is justified? If

not, the workman/the applicant is entitled to what reliefs ?"

2. The case of the Bihar Colliery Kamgar Union (BCKU) for petitioner Smt. Shanti Devi is that Late Tahal Modi had been working as permanent Minor Loader at Lohapati Colliery since long. On declaring him as medically unfit for duty by the Company Medical Board as he was referred by the Management for it, he was terminated from service on that ground. Unfortunately, the workman died on 30-8-1992, leaving behind his dependant wife Smt. Shanti Devi. She accordingly had represented to the management several times for her employment just as hundred such dependants had got, yet without any effect, and the management discriminated her by not providing her employment on the ground of sex. The Union in course of the conciliation proceeding had also submitted to the management for employment of the dependant son of the workman, if an employment is denied to the female dependant. But it was not considered. The conciliation proceeding finally resulted in the reference for adjudication. As such the action of the management in not providing an employment to the petitioner is illegal and against the provision of NCWA according to which she is entitled to her re-employment.

No rejoinder filed by the Union to the written statement of the Management in the case.

3. Whereas the contrapleaded case of the management with categorical denials is that petitioner Smt. Shanti Devi is the wife of Ex. Workman Late Tahal Modi, Ex-Minor Loader of Lohapati Colliery had applied to the management for her employment as the workman was declared unfit for duty on 29-4-1992. Her application was forwared to the Head Quarters for examination and necessary action as per policy of the Company. When the case file was put before the Competent Authority, it was regretted, as she was not the first wife of the deceased workman as per Letter No. BCCL/PA-VI/3(8)/II/86/92/24214 dt. 15/16-9-95, rather Smt. Kamli Devi was his first wife, and as per the provisions of NCWA, the 2nd wife is not entitled to get an employment while the 1st wife is alive or off-spring. So the action of the management in denying the petitioner's employment as 2nd wife of the workman is quite just, fair and legal.

Further the management in its rejoinder has stated that according to the death certificate bearing no. 387213, the date of death was 5-8-93, not on 30-8-92 the date of its Registration No. 77. The claim of the Petitioner was regretted by the Head Quarters.

FINDING WITH REASONING

4. In this case, WW1 Shanti Devi, the Petitioner herself for the Union, and MW1 Jatadhari Roy, the Assistant, Personnel Department, Lohapati Colliery for management have been examined.

According to WWI Shanti Devi, wife of workman Late Tahal Modi, since her husband was stopped from his service on the ground of medical unfitness as declared by the Medical Board in the year 1992 (as per the office order dt. 29-4-92, Ext. W.1) and he died on 5-8-1992 (Ext. W.4), she submitted in writing to the management for employment on compassionate ground (as per her application dt. 17-9-1993—Ext. W.3), but the management turned down her prayer, so she raised the Industrial Dispute. She claims to be the only wife of her deceased husband, denying the non consideration of her representation by the management on her being a second wife of the deceased workman.

Whereas admitting the status of the deceased workman Tahal Modi as Minor/Loader in Lohapati Colliery and upon his being medically declared unfit on 29-4-92, his aforesaid petitioner wife applied for her employment which was forwarded to the Head Quarters but it was rejected by the Head Quarter as per letter dt. 15/15-9-95 (Ext. M.3). On raising the Industrial Dispute, the Management has responded as per letter dt. 28-1-2002 (Ext. M.1) to the ALC (C) concerned that since petitioner Shanti Devi is the second wife of the workman, she was not given employment in place of Late workman Tahal Modi. This management witness (WWI) has admitted that the workman had written the name of his wife as Shanti Devi in his Service Excerpt (Ext. M.2), and as per NCWA when any workman is declared medically unfit, his dependant is given employment in his place. He (MWI) seems ignorant of a Certificate issued by the B.D.O. about the petitioner as the wife of the workman (Ext. W.2). It is also indisputable that in the year 1987, all the workmen of the collieries were issued their own service excerpts for correction of any mistake in their age, date of birth or the names of their nominees.

5. As per the letter dt.20-3-2002 of the Dy. Chief Personnel Manager to the Dy. Personnel Manager (I.R.), WJA, Moonidih (Ext. M.4), Petitioner Shanti Devi is alleged to be second wife of deceased workman on scrutiny of the papers/documents, as his 1st wife was Kamli Devi as per the affidavit submitted to the Officer. But the management has not produced or proved any such document to rebut the case of the petitioner. Rather the Service Excerpt of the deceased workman produced on behalf of the management proved as Ext. M.2 (on admission) proves petitioner Shanti Devi is the wife of the deceased workman with details of Family Members Gita Charan Modi and Dhaneshwar Modi as sons as also affirmed by the Heirship Certificate No. 78 dt. 12-11-1992 (Ext. W.2).

6. In view of the aforesaid facts, Mr. D. Mukherjee, Learned Counsel for the Union/Petitioner, relying upon the authority : 2007 (115) FLR 427 (SC) (DB), Mohan Mahato Vs. M/s. Central Coal Field Ltd., & Others has submitted as also held by the Hon'ble Apex Court, that

'the Settlement known as N.C.W.A. V within the meaning of Sec. 18(3) of the Industrial Dispute Act, 1947 related to providing for employment of dependants of deceased employees working in Coal Mines is binding on both the parties and continues to remain in force unless the same is alterned, modified or substituted by another settlement (para 10)'; as such she is entitled to her employment accordingly. Adversely to it, Mr. U.N. Lal, Learned Advocate for the management contends that no provision of the N,.C.W.A. provides for the employment of 2nd wife of the deceased workman.

7. On speculation of the materials of both the parties available on the case record, I find that by virtue of the Service Excerpt dt. 23-3-87 (Ext. M.2) as proved on behalf of the management, it stands established beyond reasonable doubt that petitioner Shanti Devi was the wife of deceased workman Tahal Modi, M/Loader of Lohapati Colliery, as the management has substantially failed to rebut the case of the petitioner.

Under these circumstances, it is held that the action of the Management of Moonidih Colliery of M/s. BCCL in denial the employment to petitioner Shanti Devi, wife of Tahal Modi (deceased workman) on compassionate ground is totally unjustified in eye of Law. Hence the applicant Shanti Devi, as the wife of deceased workman is entitled to her employment or monetary compensation in accordance with the provision of clause 9.5.0 read with clause 9.4.0 as the case may be applicable to her at the time of her representation in the year 1993 while the National Coal Wages Agreement (NCWA)-V was in force. Hence the Management is directed to implement the Award within two months from the date of its receipt following the publication of it in the Gazette of India. This Award may be sent to the Labour Ministry, Government of India for information and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/69/2011-आई आर (सीएम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/69/2011-IR (CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 10 of 2012

Parties : Employer in relation to the management of E.J. Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Mr. S.C. Gaur, the Ld. Adv.

On behalf of the management : Mr. D.K. Verma, the Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 18th Dec., 2012

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/69/2011-IR (CM-I) dt. 10-1-2012 :

SCHEDULE

"Whether the action of the management of Bhowra (S) Colliery of M/s. BCCL in not referring Smt. Sanjoti Manjhian, wife of Late Radha Nath Manjhi for assessment of actual date of birth/age is justified and fair? To what relief Smt. Sanjoti Manjhian, wife of Late Radha Nath Manjhi is entitled to ?"

2. Mr.S.C. Gaur, the Ld. Advocate-cum-Vice President, RCMC the Union for the petitioner Sanjoti Manjhian, wife of Late Radha Nath Manjhi is present and submits by filing a petition for the closure of the case on the ground that the petitioner Lady is not interested to pursue the case. Mr. D.K. Verma, the Ld. Advocate for the Management is present. No written statement filed by the petitioner/workman.

Perused the case record. It reveals that the case has been all along pending for filing W.S. of the petitioner

since 4-4-2012, for which two Regd. notices were issued to the Union concerned for it. The present Reference relates to an issue about not referring the petitioner for assessment of actual date of birth/age. In view of the uninterestedness of the petitioner Lady as the wife of Late Radha Nath Manjhi in pursuing the case, the case is closed as such there is no longer the Industrial Dispute existent. Accordingly, it is passed an Award of 'No Dispute'.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (आई डी संदर्भ संख्या 103/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/154/2005-आई आर (सी-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/154/2005-IR (CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 103 of 2005

Parties : Employer in relation to the management of Sijua Area of M/s. B.C.C.L. and their workman.

APPEARANCES :

On behalf of the Workman : None

On behalf of the Management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 20th Dec., 2012

1. The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/154/2005-IR (CM-I) dt. 6-12-2005 :

SCHEDULE

"Whether the demand of the Bihar Colliery Kamgar Union from the management of BCCL, Sijua Area that Smt. Sukurmoni Devi W/o Sh. Sonaram Manjhi, Ex-workman may be given employment on compassionate grounds is justified? If so, to what relief is the said dependant entitled ?"

2. Neither the Union Representative nor petitioner Smt. Sukurmoni Devi W/o Sonaram Manjhi, Ex-workman appeared nor any document filed on behalf of the petitioner despite sufficient opportunities. Mr. D.K. Verma, the Ld. Advocate for the Management is present. No. L.C. Record received from RLC(C), Dhanbad despite several reminders.

From the perusal of the case record, it is quite clear that the case has been pending for filing document on behalf of the petitioner since 25-10-2007 just as pending for the Conciliation File No. 1/17/2005 E.III from the office of the RLC(C), Dhanbad since 7/10-3-2008, for which Regd. notices to the Union concerned and several reminders to the RLC(C) concerned were given. The Union Representative of Bihar Colliery Kamgar Union and the petitioner by their conducts appear to be uninterested to pursue the case. Under these circumstances, proceeding with the case is unwarranted. Hence the case is closed as non-existent of Industrial Dispute. And accordingly an Award is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जनवरी, 2013

का. आ. 432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 58/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2013 को प्राप्त हुआ था ।

[सं. एल-20012/12/2007-आई आर (सीएम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2013

S.O. 432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2007)

of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workman, which was received by the Central Government on 24-1-2013.

[No. L-20012/12/2007-IR (CM-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT (NO. 2) AT DHANBAD

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 58 of 2007

Parties : Employer in relation to the management of Kuya Colliery of M/s. B.C.C.L. and their workmen

APPEARANCES :

On behalf of the Workman : Mr. K. Chakraborty, Ld. Adv.

On behalf of the Management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

AWARD

Dhanbad, the 11th Dec., 2012

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/12/2007-IR (CM-I) dt. 19-9-2007 :

SCHEDULE

"Whether the action of the Management of Kuya Colliery of M/s. B.C.C.L. is not regularizing Shri Kaleshwar Das as Under Ground Munshi is justified & Legal? If not, to what relief is the concerned workman entitled ?"

2. Neither Mr. K. Chakraborty, the Learned Advocate for the workman Kaleshwar Das nor any person appeared to file rejoinder or substitution petition in place of the workman as the workman has died on 15-2-2010. Mr. D.K. Verma, the Learned Advocate for the management is present.

On the perusal of the case record, it stands clear that the case has been pending for the rejoinder of the workman since 2-11-2011; meanwhile as per the office order of the Agent Kuya Colliery of M/s. B.C.C.L. dt. 18-2-2010, the workman Kaleshwar Das died on 15-2-2010 at Dhanbad. But neither the Union nor any relative of the workman made any proper representation to that effect. Under these circumstances, the conduct of the Union Representative shows uninterestedness on its part in pursuing the case for proper adjudication. Hence proceeding with the case for uncertainity is undoubtedly unwarranted. Hence the case is closed, and accordingly an Award of No Industrial Dispute existent is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 28 जनवरी, 2013

का. आ. 433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 49/2009-10) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2013 को प्राप्त हुआ था ।

[सं. एल-12012/86/2007-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 28th January, 2013

S.O. 433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2009-10) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-1-2013.

[No. L-12012/86/2007-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/49/2009-10 Date : 17-1-2013

Party No. 1 : The Chief General Manager,
State Bank of India,
Regional Office,
Kingsway Road,
Nagpur

: The Branch Manager,
State Bank of India,
Butibori (MIDC) Branch,
Butibori,
Nagpur.

Versus

Party No. 2 : Shri Namdeo,
S/o Sri Babaji Kadav,
R/o Borkhedi (Rly) Taq. & Distt.
Nagpur (MS).

AWARD

Dated, the17th January, 2013

1. In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of SBI and their workman, Shri Namdeo Babaji Kadav, for adjudication, as per letter No. L-12012/86/2007-IR (B-I) dated 12-3-2010, with the following schedule :

> "Whether the action of the management of State Bank of India, Nagpur in terminating the services of the workman Shri Namdeo Babaji Kadav w.e.f. 1-9-2003 is legal and justified ? If not, what relief the workman is entitled to ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Namdeo Kadav, ("the workman" in short), filed the statement of claim and the management of State Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was orally appointed on daily wages on 23-2-2000 at Butibori Branch of the Bank and he completed three and half years of service, before he was removed on 1-9-2003 and though he was appointed in a clear vacancy on full time basis, he was not given any appointment order and his work included sweeping of office floors, gardening, filling water in coolers and also to act as a canteen boy and he was in continuous service from the date of the initial appointment on 23-2-2000 till his oral termination on 1-9-2003 and his termination was done in an arbitrary and illegal manner and the party no. 1 is an industry and therefore, the provisions of Sections 25-H of the Act and Rule 79 of the Rules are applicable to it and it is obligatory on the part of the party no. 1 to provide him employment, whenever there is a vacancy. The further case of the workman is that the provisions of Bombay Shops and Establishments Act, 1948 are applicable to party no. 1 and therefore, the Industrial Employment (Standing Orders) Act, 1946 is applicable and under the Model Standing Orders, the party no. 1 is under obligation to maintain a list of terminated employees and provide them employment, whenever vacancy arises and the statutory provisions are not followed by the party no. 1 and it was obligatory upon the party no. 1 to comply with the provisions of Section 66 of the Bombay Shops and Establishments Act, 1948 and Sections 25-F and 25-G of the Act and therefore, his termination by order dated 1-9-2003 is illegal and arbitrary and he is entitled to be reinstated with consequential benefits and since the date of his termination, he is unemployed and to his knowledge, employees with less number of working days than him are being offered appointments and the action of party no. 1 in continuing and preferring juniors to him is also violative of Article 14 of the Constitution of India and during conciliation before the Assistant Labour Commissioner (Central), the party no. 1 had agreed to assign duty to him w.e.f. 11-11-2004, but later on, the party no. 1 went back from their words.

The workman has prayed to declare his termination dated 1-9-2003 as illegal and to set aside the same and to reinstate him in service with continuity, back wages and all consequential benefits.

3. The party no. 1 in their written statement have pleaded inter-alia that the workman has misquoted the facts and law in the statement in claim, which appear to have arisen due to misconception and misconstruction of the facts and law involved in the case and from the own admission of the workman, he had worked mainly and substantially as a canteen boy with the Local Implementation Committee, ("LIC" in short) constituted in each establishment, for the welfare of the staff working in that establishment and he was required to prepare tea/snacks and cleaning of canteen utensils and he had been working for one and half hours per day i.e. around 11AM to 12 PM and 3 PM to 3.30 PM and he left the job of his own volition and the persons engaged by the LIC are not the employees of the Bank. The further case of the party no. 1 is that the workman was also sometimes engaged purely by them on casual/daily wages basis intermittently, but without continuity in service, due to administrative exigencies for the work of sweeping and watering in the garden, filling water in the cooler and he had never worked for the full day, but on part time basis and the engagement of the workman commenced with the beginning of the day and concluded at the end of the day and there was no continuity within intervals by nature of specific work or period of work and he had not worked for 240 days in any calendar year or in the 12 months preceding the date of his disengagement and the workman worked as such for 7 days, 3 days, 29 days, 6 days, 20 days, 31 days, 1 day, 22 days, 1 day, 20 days, 9 days, 4 days, and 4 days, 1 day, 2 days, 27 days, 21 days, 7 days and 30 days in February, 2000, December, 2002, January, 2002, February, 2002, March, 2002, May, 2002, June, 2002, July, 2002, August, 2002, September, 2002, October, 2002, November, 2002, December, 2002, January, 2003, March, 2003, April, 2003, May, 2003, June, 2003 and July, 2003 respectively and the workman was engaged on daily wages/casual/temporary basis by branches, who had/have no authority to appoint any person in such category and such appointments are and were illegal/irregular and impermissible under the rules of the Bank and such

illegality cannot be perpetuated for indefinite period and the alleged agreement of service was void ab-initio and such void agreement cannot be enforced in the court of law and the engagement of the workman being purely casual and on daily wages basis, he cannot claim permanency in service.

It is also pleaded by the party no. 1 that the workman had approached the ALC in the year 2004 and he had admitted that he was mainly and substantially working as canteen boy with LIC and on 10-11-2004, there was an agreement between the Bank and the workman that the workman shall be reinstated as 'canteen boy' and when the workman was offered the job of canteen boy, he refused to work and he did not join his duties and has been restoring to litigation and the workman is not entitled to any relief.

4. In order to prove his case, the workman has examined himself as a witness and filed his examination-in-chief on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that no written order of appointment was issued by the Bank in his favour and he was making tea on each day for the staff of the Bank, as many times as directed by the Manager and besides preparing tea, he was doing other works in the Bank, such as sweeping and cleaning of the Bank premises, filling water in the coolers and watering the plants in the garden and also working as hammal and his such engagement was on daily wages basis and such engagement was as and when required basis by the Bank and he did not work against clear vacancy and he did not work for the whole day on any day of his engagement by the bank and he has not filed any document to show that he was engaged by the Bank after July, 2003 and he has not filed any document to show that his services was terminated on 1-9-2003. The workman has further admitted that he was working as canteen boy and he has not produced any document to show that he had worked for 240 days in the preceding 12 months of the date of alleged termination or in any calendar year and he has not filed any document to show that the bank has retained the workman, who were juniors to him and he was the only workman, who was engaged by the Bank on daily wages and the Bank was ready to engage him as a canteen boy, but he refused for the same and he has no idea about the contents of paragraph 2 to 6 of his affidavit. The workman, in his cross-examination has further admitted that he did not appear in any interview or written test conducted by the Bank, before his engagement in the Bank and his name was not sponsored by the Employment Exchange for his engagement in the Bank and there was also no Police Verification or Medical Examination before his engagement in the Bank.

5. No oral evidence was adduced by the party no. 1.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on 23-2-2000 as a canteen boy and was assigned to do the allied jobs of sweeping, gardening, filling water in coolers, assisting the customers etc. alongwith the job of canteen boy on daily wages and the party no. 1 is an industry and the workman is a workman under the Act and the workman worked for more than three years and he had completed more than 240 days of work every year and the services of the workman was terminated orally on 1-9-2003, without complying the mandatory provisions of Sections 25-F and 25-G of the Act and no retrenchment compensation was paid to the workman and Section 66 of the Bombay Shops and Establishments Act was also not complied with and such facts are admitted facts and the party no. 1 have not produced the documents and records in support of their claim that the workman did not work for 240 days and as the termination of the workman is illegal, the workman is entitled to reinstatement in service with continuity, full back wages and all consequential benefits.

In support of such contentions, the learned advocate for the workman placed reliance on the decisions reported in AIR 1980 SC-1219 (Santosh Gupta Vs. State Bank), 2008 II CLR 301 (M. S. Board of Secondary Vs. Sanjay Shrungarpure), 2010 Mh. L.J.-244 (Anoop Sharma Vs. Executive Engineer), 1998-80-FLR-575 (Virendra Singh Vs. State), 1999-II-LLJ-14 (Administrator Vs. Presiding Officer), 1994-II-CLR-995 (Zilla Parisad Vs. Rajendra), 2007-6-Mh. L.J-769 (Zarin Vs. M. S. Rawat), 2010-4-Mh. L.J-96 (Damodhar Vs. Deputy Engineer) and 1992 LAB. I.C. 1362 (Auro Engineering Pvt. Ltd. Vs. R. V. Gadekar).

7. Per contra, it was submitted by the learned advocate for the party no. 1 that the workman had mainly and substantially worked as canteen boy with the LIC and he was not the employee of the Bank and he left the job of canteen boy on his own volition and the workman was engaged sometimes by the bank purely in casual/daily wage basis intermittently, but without continuity in service, due to administrative exigencies and he had not completed 240 days in the preceding 12 months of the date of the alleged termination and his initial appointment was also illegal as he was appointed by the branch manager, who had no power of appointment and the appointment of the workman was without following the due procedure, which is to be followed while making an appointment in public sector employment and the workman in his evidence has admitted that he was working as the canteen boy and that bank was ready to engage him as canteen boy, but he refused the same and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in (2000) 5 SCC-531 (State Bank of India Vs. State Bank of India Canteen Employee's Union) and

AIR 1996 SC-1565 (State of Himachal Pradesh Vs. Suresh Kumar Verma).

8. So far the contention raised by the learned advocate for the party no. 1 that the workman was a canteen boy and he was not the employee of the Bank is concerned, it is not disputed that the workman was working as a canteen boy, but it is also not disputed by the party no. 1 that the workman was engagerd by them purely on casual daily wages basis intermittently, but without continuity in service due to administrative exigencies. In view of such admission it is clear that the workman was a workman as defined in Section 2 (S) of the Act. It is also found from the materials on record that though the engagement of the workman was on daily wages basis and was not an appointment to post according to Rules, his engagement was not in any project. So, with respect, I am of the view that the two decisions filed by the learned advocate for the party no. 1 i.e. (2000) 5 SCC-531 (Supra) and AIR 1996 SC-1565 (Supra) have no clear application to the present case in hand.

9. On perusal of the materials on record, it is found that the case of the workman is that he had worked continuously from 20-3-2000 to 31-8-2003 on daily wages and his services were orally terminated w.e.f 1-9-2003 and that he had completed 240 days of work in every calendar year. Such claim of the workman has been denied by the party no. 1. The case of the pary no. 1 is that the workman was basically a canteen boy and he was also engaged in the Bank at times on casual basis on daily wages intermittently and he had not completed 240 days of work in the preceding 12 months of the alleged date of termination i.e. 1-9-2003 and he left the job of canteen boy on his own volition.

It is clear from the evidence on record that the engagement of the workman was without going through the process of selection and not according to the Rules and Regulations of appointment applicable to party no. 1.

10. It is to be mentioned here that for availing the benefits of the provisions of Section 25-F of the Act, it is necessasry for the workman to prove that he had completed 240 days of work in the preceding 12 calendar months of the date of the termination.

The Hon'ble Apex Court in number of decisions including the decisions referred in the written statement by the party no. 1 have been pleased to hold that the onus lies upon the workman to show that he had in fact worked for 240 days in the preceding 12 calendar months preceding the date of termination and in absence of proof of receipt of salary or wages or record of appointment, filing of an affidavit by the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.

In this case, the workman at the time of examining himself as a witness and so also during the hearing of the case, except his evidence on affidavit did not produce any other evidence in support of his claim. However, at the time of submitting written notes of argument, he submitted some Xerox copies of documents regarding his engagement with party no. 1. Even if the said documents are taken for consideration, the said document do not show that the workman in fact had worked for 240 days in the preceding 12 calendar months of 1-9-2003. As the workman has failed to discharge the initial burden that he had worked for 240 days preceding the 12 months from 1-9-2003, the alleged date of his termination from service, the provisions of Section 25-F do not apply to his case. The workman has not adduced any evidence to show that juniors to him were retained by the party no. 1, though his services were terminated. Rather, he has admitted that he was the only person, who was engaged by the party no. 1 on daily wages and there was no other workman on daily wages or canteen boy in the bank, while, he was working there. Hence, provisions of Section 25-G and 25-H of the Act are also not applicable to his case.

In view of the facts and circumstances of the case mentioned above, which are quite different from the facts and circumstances of the cases referred in the decisions,cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to the present case in hand. Hence, it is ordered :

ORDER

The action of the management of State Bank of India, Nagpur in terminating the services of the workman Shri Namdeo Babaji Kadav w.e.f. 1-9-2003 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 28 जनवरी, 2013

का. आ. 434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 19/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/64/2008-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 28th January, 2013

S.O. 434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 19/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, which was received by the Central Government on 28-1-2013.

[No. L-22012/64/2008-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri JAYANTA KUMAR SEN, Presiding Officer

Reference No. 19 of 2009

PARTIES:

The management of Dhemomain Colly. M/s. ECL, Burdwan

Vs.

The Gen. Secy., KMC, Asansol (WB)

REPRESENTATIVES:

For the Management : Shri P. K. Goswami, Ld. Advocate

For the union (Workman) : Shri A. N. Suman, Ld. Advocate

Industry : Coal State: West Bengal

Dated 20-12-2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Govt. of India through the Ministry of Labour vide its Order No. L-22012/64/2008-I.R. (CM-II) dated 27-7-2009 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Dhemomain Colliery of M/s. ECL in dismissing Shri Rabidass from services w.e.f. 19-11-1999 is legal and justified ? To what relief is the workman concerned entitled ?"

Having received the Order of Letter No. L-22012/64/2008-I.R. (CM-II) dated 27-7-2009 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 19 of 2009 was registered on 20-8-2009 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that Sri A. N. Suman, Ld. Advocate for the workman, has prayed for the closure of the case as the workman has already left India and working in Kuwait. Since the workman has left India and working at Kuwait, it seems that he has no more interest now to proceed with the case. Hence, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 31 जनवरी, 2013

का. आ. 435.—जबकि केन्द्रीय सरकार का विचार है कि नेशनल एविएशन कम्पनी ऑफ इण्डिया लिमिटेड के नियोक्ताओं एवं उनके कर्मकारों के बीच संलग्न अनुसूची के संबंध में एक औद्योगिक विवाद विद्यमान है;

जबकि इस विवाद में राष्ट्रीय महत्व का प्रश्न शामिल है और यह विवाद इस प्रकृति का है कि कई राज्यों में स्थित नेशनल एविएशन कम्पनी ऑफ इण्डिया लिमिटेड की रूचि इसमें हो सकती है अथवा वह इससे प्रभावित हो सकती है;

और जबकि केन्द्रीय सरकार का यह विचार है कि उपर्युक्त विवाद का न्याय-निर्णयन राष्ट्रीय न्यायाधिकरण द्वारा किया जाना चाहिए;

और जबकि केन्द्रीय सरकार औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7-ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एक राष्ट्रीय औद्योगिक न्यायाधिकरण गठित करती है जिसका मुख्यालय मुंबई में होगा और न्यायमूर्ति श्री गौरी शंकर सर्राफ, केन्द्रीय सरकार औद्योगिक न्यायाधिकरण संख्या । के पीठासीन अधिकारी को इसका पीठासीन अधिकारी नियुक्त करती है तथा उक्त अधिनियम की धारा-10 की उप-धारा (1-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्याय-निर्णयन हेतु उपरोक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को संदर्भित करती है । उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण छह माह की अवधि में अपना पंचाट देगा ।

अनुसूची

"1. क्या एयर कारपोरेशन अधिनियम, 1953 के एयर कारपोरेशन्स (उपक्रमों का स्थानांतरण तथा निरसन) अधिनियम, 1994 द्वारा निरसन के कारण औद्योगिक विवाद अधिनियम, 1947 की धारा 9-क के परंतुक के खण्ड (ख) के उपबंधों के अंतर्गत 'एयर इण्डिया अंतर्राष्ट्रीय कर्मचारी सेवा विनियम' तथा अन्य सेवा नियमों को अधिसूचित करने वाली महाराष्ट्र राज्य द्वारा जारी दिनांक 29-8-1960 की अधिसूचना समाप्त हो गई है और उक्त अधिसूचना का इस निरसन पर क्या प्रभाव है ?

2. पूर्ववर्ती एयर इण्डिया लिमिटेड (स्थानांतरणकर्ता संख्या 1 कम्पनी) तथा पूर्ववर्ती इण्डियन एयरलाइंस लिमिटेड (स्थानांतरण संख्या 2 कम्पनी) के महाराष्ट्र सरकार द्वारा जारी दिनांक 29-8-1960 की अधिसूचना के 22-8-2007 से प्रभावी होने पर मैं. नेशनल एविएशन कम्पनी ऑफ इण्डिया लिमिटेड (स्थानांतरित कम्पनी) में एकीकरण, यद्यपि पूर्ववर्ती एयर इण्डिया लिमिटेड तथा पूर्ववर्ती इण्डियन एयरलाइंस लिमिटेड तथा वर्तमान मै. एन ए सी आई एल के प्रतिष्ठानों के लिए औद्योगिक विवाद अधिनियम के उपबंधों के अंतर्गत समुचित सरकार केन्द्र सरकार है, के क्या वैधानिक निहितार्थ/प्रभाव हैं ?

3. क्या मै. एन ए सी आई एल के प्रबंधन की निपटाए गए व्यवहार तथा प्रयोगों के अनुसार माह के अंतिम कार्यदिवस को कर्मकारों को मासिक वेतन/मजदूरी का नियमित भुगतान न करने की कार्रवाई औद्योगिक विवाद अधिनियम, 1947 की चौथी अनुसूची की मद संख्या 1, 3 एवं 8 के साथ पठित धारा 9-क का उल्लंघन है ? कर्मकार किन-किन राहतों के पात्र हैं तथा इस मामले में कौन से अन्य निदेश अनिवार्य हैं ?"

[सं. एल-11012/44/2009-आई आर (सी-1)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 31st January, 2013

S.O. 435.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of National Aviation Company of India Ltd. and their workmen in respect to the schedule annexed;

And whereas the dispute involves question of national importance and is of such nature that the establishments of National Aviation Company of India Limited situated in more than one State are likely to be interested in, or affected;

And whereas the Central Government is of the opinion that the said dispute should be adjudicated by a National Industrial Tribunal;

And whereas the Central Government, in exercise of powers conferred by Section 7B of the Industrial Disputes Act, 1947 (14 of 1947) hereby constitutes a National Industrial Tribunal with the Head Quarters at Mumbai and appoint Justice Gauri Shanker Sarraf, presently Presiding Officer, CGIT No. 1, Mumbai as its Presiding Officer and in exercise of the powers conferred by sub-section 1A of Section 10 of the said Act, hereby refers the said Industrial Dispute to the said National Industrial Tribunal for adjudication. The said National Industrial Tribunal shall give its award within a period of six months.

SCHEDULE

"1. Whether the notification dated 29-8-1960 issued by the State of Maharashtra notifying the 'Air India International Employees Service Regulations' and other Service Rules under the provisions of clause (b) of the proviso to Section 9-A of I.D. Act, 1947 has lapsed on account of Repeal of Air Corporations Act, 1953 by Air Corporations (Transfer of undertakings and Repeal) Act, 1994 and effect of such repeal on the said notification ?

2. What is the legal implication/effect of amalgamation of erstwhile Air India Ltd. (Transferor No. 1 Company) and erstwhile Indian Airlines Ltd. (Transferor No. 2 Company) with M/s. National Aviation Company of India Ltd. (Transferee Company) effective from 27-8-2007 on the Notification dated 29-8-1960 issued by the Government of Maharashtra, though the Appropriate Govt. for the establishments of erstwhile Air India Ltd. and erstwhile Indian Airlines Ltd. and now M/s. NACIL under the provisions of I.D. Act is Central Government ?

3. Whether the action of the management of M/s. NACIL in not making the regular payment of monthly salary/wages to the workmen on the last working day of the month, as per settled practice and usages is a breach of Section 9-A read with item Nos. 1, 3 and 8 of the Fourth Schedule of I.D. Act, 1947 ? To what relief are the workmen entitled and what other directions are necessary in the matter ?"

[No. L-11012/44/2009-IR (C-I)]
M. K. SINGH, Section Officer

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